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BLACKOUT OF SPORTING EVENTS ON TV

GOVERNMENT DOCUMENTS

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HEARINGS

BEFORE THE
SUBCOMMITTEE ON COMMUNICATIONS
OF THE
COMMITTEE ON COMMERCE
UNITED STATES SENATE
NINETY-SECOND CONGRESS

SECOND SESSION

ON

S. 4007

TO AMEND THE ACT PROVIDING AN EXEMPTION FROM THE ANTITRUST LAWS WITH RESPECT TO AGREEMENTS BETWEEN PERSONS ENGAGING IN CERTAIN PROFESSIONAL SPORTS FOR THE PURPOSE OF CERTAIN TELEVISION CONTRACTS IN ORDER TO TERMINATE SUCH EXEMPTION FOR TELEVISION BLACKOUTS OF GAMES WITHIN THE HOME TERRITORY OF A CLUB ON A DAY WHEN SUCH CLUB IS PLAYING A GAME AT HOME

S. 4010

TO AMEND THE ACT PROVIDING AN EXEMPTION FROM THE ANTITRUST LAWS WITH RESPECT TO AGREEMENTS BETWEEN PERSONS ENGAGING IN CERTAIN PROFESSIONAL SPORTS FOR THE PURPOSE OF CERTAIN TELEVISION CONTRACTS IN ORDER TO TERMINATE SUCH EXEMPTION WHEN A HOME GAME IS SOLD OUT

OCTOBER 3, 4, AND 5, 1972

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BLACKOUT OF SPORTING EVENTS ON TV

TUESDAY, OCTOBER 3, 1972

U.S. SENATE,
COMMITTEE ON COMMERCE,
COMMUNICATIONS SUBCOMMITTEE,
Washington, D.C.

The subcommittee met at 11 a.m. in room 5110, New Senate Office Building, Hon. John O. Pastore (chairman of the subcommittee) presiding.

Present: Senators Pastore, Cannon, Moss, Cotton, Griffin, Cook, and Beall.

OPENING STATEMENT BY SENATOR PASTORE

Senator PASTORE. We regret the delay very much. Senator Griffin, myself, and other members of this committee were invited to the White House to witness the signing of the treaty limiting antiballistic missiles. That invitation came late yesterday afternoon.

We apologize for the delay.

This hearing is being held to explore blackouts of television in certain professional sports—football, basketball, baseball, and hockey—within the home territory of a team when the team is playing at home.

This committee has received numerous complaints from the public and various Senators on behalf of their constituents. Many fans feel themselves deprived because there is a blackout even when the game is sold out.

They couldn't buy a ticket for love nor money; and they could not understand and do not understand why there should be a blackout when the game is sold out.

We are going to explore this. We are not going to prejudge anything. We want to hear all sides of the question, but we want everyone to bear in mind that in this particular case the dominant issue is not the gross, either at the gate or the amount received for the franchise to show the games. Nor is it the interest of the league, or the interest of the television networks that is of primary concern.

What we are concerned with here is the fact that the airwaves belong to all the people, and we have made certain allowances for professional sports—the four that I have mentioned—in granting them an exemption from the antitrust law in 1961. Because of this exemption, the league may act on behalf of all member teams and sell the television rights as a package to the networks.

Staff members assigned to these hearings: Nicholas Zapple and John D. Hardy.

One of the conditions the league attaches to the sale of such a package is a television blackout of home games within the home territory of a team. This means the networks cannot furnish the home game of a team to any station within the home territory of that team. In many instances the blacked out area is more than 75 miles from the home team's city. Sometimes 120 miles. For example, a station within a radius of 75 miles of the home team may be blacked out. But if you take the service area of that station, you are blacking out more than 75 miles.

You may be dealing with 120 miles. That is exactly what is happening in Scranton when the games are being played in Philadelphia, and that is exactly what is happening here.

One of the inconsistencies is this: We have CATV that is being encouraged and should be encouraged. If CATV can pick up signals beyond the radius of 75 miles and bring it into blacked out areas it means those who have the privilege and the money of having CATV can see the game in the blacked out locality, but those who have to depend on free television cannot see it.

And that is wrong. I understand that the matter is now before the FCC and they are going to wrestle with it. In the meantime, there you are. You have more or less a situation of favoritism, which I do not think is in the public interest.

One of the chief sponsors of this legislation is the distinguished Senator from Michigan, the minority whip of the U.S. Senate. He and I have discussed this matter, and I think he is prepared to make a statement at this time. I am very happy to yield to Mr. Griffin.

**STATEMENT OF HON. ROBERT P. GRIFFIN, U.S. SENATOR FROM
MICHIGAN**

Senator GRIFFIN. Thank you very much, Mr. Chairman, and as you indicated, because the two of us along with other Senators were required to be at the White House for the signing of the SALT agreements, these hearings have been delayed.

I know you have a number of witnesses who are waiting to appear. In view of that, I shall not burden you with reading the complete statement that I have prepared but with permission I would like to have it inserted in the record as though it were read in full and I also would appreciate having inserted in the record of these hearings a statement that I made on the floor on September 19 concerning a bill that I introduced on this subject.

Senator PASTORE. Without objection, we will insert in the record S. 4007, S. 4010, and also the remarks of the Senator from Michigan on the floor of the Senate.

(The documents referred to follow:)

92^D CONGRESS
2^D SESSION

S. 4007

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 1972

Mr. GRIFFIN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

SEPTEMBER 29, 1972

Referred to the Committees on the Judiciary and Commerce, jointly

A BILL

To amend the Act providing an exemption from the antitrust laws with respect to agreements between persons engaging in certain professional sports for the purpose of certain television contracts in order to terminate such exemption for television blackouts of games within the home territory of a club on a day when such club is playing a game at home.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 2 of the Act entitled "An Act to amend the
4 antitrust laws to authorize leagues of professional football,
5 baseball, basketball, and hockey teams to enter into certain
6 television contracts, and for other purposes," approved Sep-
7 tember 30, 1961 (15 U.S.C. 1292), is amended by strik-
8 ing everything after the word "area," and inserting in lieu
9 thereof a period.

S. 4010

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20, 1972

Mr. PASTORE (for himself, Mr. BEALL, Mr. BIBLE, Mr. COOK, Mr. COTTON, Mr. GRIFFIN, Mr. HUMPHREY, Mr. KENNEDY, Mr. MOSS, Mr. NELSON, Mr. PROXMIRE, and Mr. RANDOLPH) introduced the following bill; which was read twice and referred jointly to the Committees on Commerce and the Judiciary (by unanimous consent)

A BILL

To amend the Act providing an exemption from the antitrust laws with respect to agreements between persons engaging in certain professional sports for the purpose of certain television contracts in order to terminate such exemption when a home game is sold out.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 2 of the Act entitled "An Act to amend the
4 antitrust laws to authorize leagues of professional football,
5 baseball, basketball, and hockey teams to enter into certain
6 television contracts, and for other purposes", approved Sep-
7 tember 30, 1961 (15 U.S.C. 1292), is amended by inserting

1 before the period at the end thereof a comma and the follow-
2 ing: "but this exception shall cease to apply with respect to
3 any such game when tickets for admission to such game are
4 no longer available for purchase by the general public forty-
5 eight hours before the scheduled beginning time of such
6 game".

[From the Congressional Record, Tuesday, Sept. 19, 1972]

TV BLACKOUTS OF PROFESSIONAL FOOTBALL GAMES

Mr. GRIFFIN. Mr. President, today I am introducing a bill to repeal the antitrust exemption which now makes it possible for the professional football leagues to impose a TV blackout on home football games, even in situations when all tickets to such a game are already sold in advance.

The legislation would apply also to professional baseball, hockey, and basketball, although TV blackouts are not as serious a problem in those sports.

There is no longer any justification for granting blanket immunity from the antitrust laws so that professional football may prohibit the local telecasting of all home games. In 1953, a Federal district court ruled that home game blackouts of professional football games did not violate the antitrust laws *United States v. National Football League*, 116 F. Supp. 319 (1953). Subsequently, in 1961 Congress provided by law that TV blackouts of both outside and home games broadcast into the home territory of a team would be exempt from antitrust action.

The argument expressed in the 1953 decision that certain TV blackouts were absolutely essential to the survival of the National Football League has no substance today. Since 1961 attendance in the NFL has doubled and most regular season games as well as exhibition games are sellouts or near sellouts.

In 1971 total season ticket sales for all clubs in the American Football Conference accounted for 66 percent of total stadium capacity and in the National Football Conference for 74 percent of total stadium capacity. Thus, there is not only an assured market for the owners but at the same time there is little opportunity for the average fan to purchase tickets for individual games.

The situation in professional football is somewhat different than it is in other sports. Not only is fan interest in pro football widespread but the limited number of regular season games places a premium on both tickets and the availability of home viewing. Football is the only professional sport to receive regional and nationwide telecasting for practically all games, including exhibition and postseason contests. This demand coupled with the scarcity of tickets in most league cities underscores the urgency for review of congressional policy toward television blackouts.

In Washington, D.C., for instance, all exhibition and home games of the Washington Redskins are sold out to season ticketholders and there is a long waiting list for these tickets. Thus in Washington, home viewing is the only way that most fans will ever get an opportunity to see a local Redskins game.

In other professional sports such as basketball and baseball the problem with television blackouts is not nearly so acute. In both of these sports there is a much greater opportunity for fans to attend home games. Many of the games are not televised at all.

In professional hockey where there perhaps is even a higher number of sellouts than in pro football and large numbers of season ticketholders, the National Hockey League and individual club owners have shown some flexibility toward the televising of home games. For instance the Boston Bruins televise a substantial number of home games in the Boston area. In recent years a number of the nationally televised NHL games have not been blacked out in the home territory of one of the teams involved, particularly where fan interest in that city is very high. Also, most of the Stanley Cup playoff games are not blacked out locally.

Mr. President, the absence of blackouts for such major sports events such as the World Series, the Rose Bowl, the Kentucky Derby has not lessened the interest of avid fans in attending these sports events. Unfortunately, this public interest policy has yet to be extended to the Super Bowl—a decision which has roused substantial opposition in cities such as Miami, New Orleans, and Los Angeles.

Mr. President, it is very clear to me that the inflexibility of the National Football League on the question of television blackouts should no longer be encouraged through the congressional grant of antitrust immunity. By taking away this legislative immunity, as I am proposing, TV blackouts will not automatically be eliminated. It does mean that the National Football League will no longer have the freedom to determine unilaterally when and over what area blackouts will be imposed. Individual clubs would still be able to control televising their home games if such controls are reasonable and in the public interest.

Removal of the antitrust exemption should open the door to close scrutiny of the longstanding league rules that the home territory of a team is defined as a 75-mile radius from the exterior limits of the home city. This rule has been in existence for over 20 years and its wide-sweeping scope may not be justified in many cities today.

Furthermore, the 75-mile rule has the effect of prohibiting home viewing of games even beyond the 75-mile radius. The televising of home games by stations beyond the 75-mile radius whose signals can be received within that radius is also prohibited. In the case of the Detroit Lions, for instance, not only are there three local Detroit stations which are blacked out when the Lions are playing at home, there are also six network stations outside Detroit which do not carry the games because of the blackout rule. There are two stations in Lansing; three in Toledo, and one in Flint.

Mr. President, I believe the legislation I am proposing is reasonable and does not endanger the financial security of the National Football League or its individual clubs. Passing any legislation would encourage the National Football League to experiment as the National Hockey League has done. Perhaps a few home games could be televised locally or the definition of home territory could be narrowed.

It should be pointed out that in instances where the National Football League has modified its policy toward blackouts the result has not been disastrous. The antitrust exemption enacted in 1961 authorized the blackout not only of home games but also of outside games broadcast into the home territory of a team playing at home. In 1966 the NFL voluntarily removed the ban on the broadcasting of outside games, and in lieu of the fact that in 1971 over 95 percent of all seats in the NFL were sold, it is apparent that no harm has been done.

Mr. President, it is my hope that prompt consideration will be given this proposal by Congress so that millions of football fans will get a better shake.

Senator GRIFFIN. Mr. Chairman and members of the committee, I appreciate the opportunity to testify today on behalf of legislation which seeks to limit the National Football League's TV blackout policy.

That policy today deprives literally millions of fans in cities around the country of the opportunity of watching their favorite football team in action at home despite the fact that most games are sold out well in advance. Often, we find that the very fans who are helping finance the construction of new stadiums for their local teams with their hard-earned tax dollars are not permitted to watch that team when it plays in its home stadium.

Since Congress in 1961 gave the NFL carte blanche authority to prohibit the local televising of home games without fear of antitrust consequences, it is up to Congress to terminate this authority when it no longer serves the public interest.

Frankly, I believe that time has come. Accordingly, on September 19, 1972, I introduced S. 4007, a bill which would repeal the antitrust exemption for home territory blackouts of pro football, baseball, basketball, and hockey games. Subsequently, Mr. Chairman, you introduced S. 4010 on the following day, which I was delighted to join in cosponsoring. Although this bill restricts blackouts only where a game is sold out, its practical effect is similar to S. 4007.

I am also pleased, Mr. Chairman, that hearings on these bills were promptly scheduled. Perhaps these hearings and strong congressional support for an end to blackouts will in and of itself prod the NFL to modify its policy. I strongly believe, however, that legislative action is called for.

Mr. Chairman, the legal authority for certain TV blackouts of pro football games dates back to a 1953 Federal court decision in which

it was held that league rules prohibiting the televising of outside games into the home territory of a team playing at home are not in violation of the Sherman Antitrust Act. Significant here, however, is the fact that the court did not specifically address questions concerning the appropriateness of home game blackouts, since individual clubs, instead of the league, determined whether home games would be televised.

The argument expressed in the 1953 decision that outside game blackouts were absolutely essential to the survival of the National Football League has no substance today. Illustratively, in 1966 the NFL voluntarily removed the ban on the broadcasting of outside games. Despite that fact, in 1971, over 95 percent of all seats for all NFL games were sold.

Congress in 1961 provided by law that NFL rules requiring TV blackouts of both outside and home games be exempt from antitrust action. Passage of this legislation locked in concrete the 1953 ruling, thus precluding any further examination of the antitrust implications of home game blackouts.

The need for a new blackout policy is clearly evident today.

First, since 1961, attendance in the NFL has doubled. Most regular season games as well as exhibition games are sellouts. Furthermore, season ticket sales account for over two-thirds of total stadium capacity in the NFL. This large season ticket sale coupled with the limited number of games make it almost impossible for the average fan ever to see his home team in action.

For instance, in Washington, D.C., all exhibition and home games of the Washington Redskins are sold out to season ticket holders and there is a long waiting list for these tickets. In Detroit over 80 percent of the seats to the Lions games are held by season ticket holders, and there is practically no turnover of tickets.

Second, pro football fans have a direct economic interest in their favorite teams. Most stadiums today are built in whole or in part with the public funds. Since 1966, 10 clubs have moved to new homes. Earlier this year in testimony before the Senate Antitrust Subcommittee, the National Football League Players Association emphasized the obligation of pro football to the public. Referring to the large number of new and proposed stadiums the association noted that—

. . . tremendous demands have been made on our cities by these clubs to build new facilities when our cities already stagger under the burden of deteriorated housing, inadequate schools and poor medical facilities. In Dallas, the owners made the purchase of a bond of up to \$1,000 as a condition precedent to the purchase of a season ticket. How many thousands of poor and middle income fans were thereby eliminated from the ranks of season ticket holders? Where is the concern for the fans? So much for the pledge to the public.

It is ironic that the protective screen provided by Congress for the NFL is in direct conflict with another congressional mandate that broadcast licensees operate in the public interest. If the broadcaster is to fulfill his obligation to serve the public interest Congress must remove the shackles of antitrust immunity for TV blackouts.

Third, the experience in other professional sports and such major sports events as the World Series, the Rose Bowl and the Kentucky Derby, indicates that the rigid policy followed by the NFL is unjustified and arbitrary.

In professional hockey where there perhaps is an even higher number of sellouts than in pro football, the National Hockey League and individual club owners have shown some flexibility toward the televising of home games. For instance, home games are televised in Toronto and Montreal and the Boston Bruins televise a substantial number of home games in the Boston area.

Furthermore, in recent years a number of the nationally televised NHL games of the week have not been blacked out in the home territory of one of the teams involved. And most of the Stanley Cup play-off games are not blacked out locally.

In other professional sports such as baseball and basketball the problem of television blackouts is not nearly so acute. Not only are many games not blacked out, but in most of these sports, there is a much greater opportunity for fans to attend home games.

Fourth, apart from the validity of the blackouts, close scrutiny should be given to the longstanding NFL rules defining the home territory of teams as a 75-mile radius from the exterior limits of the home city. This rule was in existence at the time of the 1953 court decision, and as noted previously, Congress in effect adopted this definition when the antitrust exemption was enacted in 1961.

The 75-mile rule has the effect of prohibiting home viewing of games even beyond the 75-mile radius for the televising of home games by stations beyond the 75-mile radius whose signals can be received within that radius is also prohibited. Some 83 stations across the country, in addition to home town stations, are affected by the current home territory rule.

In the case of the Detroit Lions, for instance, not only are local stations affected but network stations outside Detroit in such major market areas as Lansing, Toledo, and Flint cannot carry the games because of the blackout rule. Thus, in these three areas alone, over 800,000 families are denied the opportunity to watch the Detroit Lions play to a sellout crowd at Tiger Stadium.

In this connection, it is useful to point out that during the hearings on the 1961 legislation, the Justice Department recommended that any antitrust exemption for the blackout of home games should apply only to games televised in the "community" where a game is being played. The term "community" would seem to have a much more limited scope than the home territory rule of the NFL. One would have to stretch his imagination quite hard in order to find that Lansing, Mich. is in the same community as Detroit.

Mr. Chairman, as you know the Judiciary Committee reported a basketball merger bill, S. 2373, which includes an amendment restricting the use of blackouts in playoff games where there is a sellout at least 5 days prior to the game. Now I realize that serious questions may arise as to the point in time prior to a game when a sellout would trigger the antiblackout provisions and who should have the authority to determine that a sellout does in fact exist.

Under the Judiciary Committee bill for example, the determination as to the existence of a sellout would be in the sole discretion of the chief executive officer of the four professional sports leagues. And, as noted, a sellout would have to occur 5 days in advance of the game.

I believe that the committee should seriously consider the possibility of establishing a trigger at some figure less than a sellout such as 90 or 95 percent of capacity. By not requiring a complete sellout and by moving the determination closer to the date of the game, such as the 48-hour period in S. 4010, there would be greater assurance that the trigger could not simply be bypassed by withholding a few tickets right up to game time.

To assure greater uniformity and public accountability it might even be desirable to have an independent agency such as the Federal Communications Commission promulgate regulations for the league to follow in determining whether a sellout or near sellout exists and for making sure that the public is aware of this determination.

Mr. Chairman, the current NFL blackout policy demands prompt congressional action. The NFL's argument that TV blackouts are necessary to protect home gate revenues is not very convincing in view of the packed stadiums and stabilization of players' salaries since the 1968 merger.

It is interesting that when pro football came to Congress in 1961 requesting antitrust immunity for the pooling of television revenues under joint agreements with the networks, considerable emphasis was given to the importance of television revenues for the financial success of pro football. The report of the Senate Judiciary Committee on that legislation contains the following statement:

The Commissioner of the American Football League testified that television revenues are such a significant part of the overall financial success of a professional football team that it is necessary to prevent too great disparity in the television income of the various clubs. * * * *It was further stated that each individual club needs broad exposure on television both for prestige among home attendance as for drawing power in attracting talent.* (Emphasis supplied.)

Mr. Chairman, it is impossible to reconcile the above quotation with the existing blackout policy. The National Football League appears to want it both ways. On the one hand they want antitrust protection to increase television revenues through package contracts, while on the other hand they want antitrust protection in order to protect gate revenues from too much television.

It is high time that the Congress took strong, decisive action to limit the NFL's ability to adopt blackout policies which disregard the interest of the hometown fans not fortunate enough to hold season tickets.

I want to register my strong support for a change in the TV blackout policy that now means that football fans cannot view home professional games even when those games have been sold out long in advance.

Since it was Congress that made it possible for the football leagues to continue this policy by virtue of the antitrust exemption which Congress granted in 1961, now it is up to Congress to do something to terminate that authority since the facts indicate that such a policy no longer serves the public interest.

Like you, Mr. Chairman, I believe the time has come for Congress to act. As you know, on September 19th, I introduced a bill, S. 4007, which would repeal the antitrust exemption for home territory blackouts of professional football, baseball, basketball, and hockey games.

Of course, Mr. Chairman, you introduced S. 4010 with respect to which I joined as a cosponsor. Let me say at the outset that I am not wedded to the specific words or language of either of these bills or any other bill. What I want is action that will put home professional football games on television, particularly when all the tickets have been sold out in advance.

And if there is some modification, some change in the approach that can be more effective than the language I have introduced, I am all for it. I think these hearings are a great step forward. I want to commend the chairman for calling them so promptly, and getting consideration in the Congress underway.

I hope that something can be done in this session to affect some of the games this year. I think everybody knows the situation as far as the Washington Redskins are concerned. All of those tickets are sold out in advance. As far as the Detroit Lions are concerned, 80 percent of the tickets in Tiger Stadium are held by season ticketholders, and as I understand it, at the present time there are only a few obstructed view tickets available for two of the Lions games remaining.

If we do take action, Mr. Chairman, perhaps we should not insist upon a complete sellout. We should recognize that it might be more practical to require something in the category of a substantial sellout, so that club owners could not evade or circumvent what we try to do by perhaps holding back a few tickets or something of that kind.

Whatever needs to be done in this area to change the existing policy, we ought to do it. If there is some experimentation to be done, that might be a good thing. We could try it and see how it works. Certainly the present policy makes no sense at all and football fans all over the country, including many in Michigan, realize that something ought to be done.

Thank you, Mr. Chairman, for allowing me to make that statement. Senator PASTORE. Senator COTTON?

Senator COTTON. Mr. Chairman, I thank you for permitting me to say a word at this time, since I have to return to a meeting of the HEW Appropriation Subcommittee immediately.

I was delighted to cosponsor this bill. I think that it is essential that something be done. I think that the American people want such action now.

But, you also will recall, that in the Senate Chamber I suggested that during these hearings, while the representatives of the networks were before us, there was one other subject I hoped would be addressed.

I am now referring to the fact that I am one of those people who don't want to see football, even though today more people seem to be interested in football than any other professional sport. But, I hate to see baseball blacked out from the middle of July right straight through to February when football takes control.

For example, the week before last when I was home in New England, I had the opportunity Saturday and Sunday to watch any one of four professional football games. But, I didn't have the opportunity to see the Red Sox play, or any of the teams who have been in a tight race for the Eastern division of the American League.

Therefore, in support of my position and with your permission, Mr. Chairman—and this will interest the distinguished Senator from

Michigan (Mr. Griffin)—I would like to insert in the record at this point an article from this morning's *Washington Post* entitled "TV Shuts Eyes To Tigers—Sox." It starts as follows, referring to the Monday night football game:

"It featured the lackluster New York Giants and the Philadelphia Eagles—both 0-2 and doubtless headed for worse."

"A much more significant sporting event was taking place in Detroit—the Tigers versus the Boston Red Sox in the first game of three to decide the American League East pennant."

Senator GRIFFIN. Does it say there the Tigers won? [Laughter.]

Senator COTTON. The article then goes on to discuss the difficulties the networks would have to televise the baseball game.

Now, I am not trying to confuse the issue. But, I do hope we have a chance for some discussion of the problem raised by this article. I am thoroughly for the purposes of this bill. I don't wish to dilute the point with any other subject, other than that which I have just raised. (The article follows:)

[From the *Washington Post*, Oct. 3, 1972]

TV SHUTS EYES TO TIGERS-SOX

(By David DuPree, *Washington Post* Staff Writer)

It was Howard and Dandy Don and Just Plain Frank on ABC's Monday night football last night, but the game was less than a show biz spectacular. It featured the lackluster New York Giants and the Philadelphia Eagles—both 0-2 and doubtless headed for worse.

A much more significant sporting event was taking place in Detroit—the Tigers vs. the Boston Red Sox in the first game of three to decide the American League East pennant.

But what was on NBC, the network that bills itself "The Major League Network," the outfit that ran 10 Monday night baseball games earlier this year?

Not Mickey Lolich throwing fast balls to Carl Yastrzemski, but Geraldine Page throwing romantic curves to Clint Eastwood in a movie called "Beguiled."

"Beguile," according to the Random House dictionary, means "to take away by cheating or deceiving." For the thousands of baseball fans in the U.S., the irony was perfect.

"We would have loved to show the game," said an NBC spokesman, "but there was just no way it could have been done. We didn't have the time nor the rights to it." The game was televised on a Boston channel.

He explained that NBC is in the first year of a four-year contract with major-league baseball that calls for it to televise 26 Saturday afternoon games and 10 Monday night games, not counting the playoffs and the World Series.

"Our 10th Monday night game was Labor Day," the spokesman said, "so our Monday contract had expired."

A spokesman in baseball commissioner Bowie Kuhn's office said that NBC never asked for permission to show last night's game or any games of the decisive Detroit-Boston series.

"It would have been tough and many things would have had to have been worked out," the spokesman said, "but it is possible that something could have been done."

NBC rebutted by saying that it is the only network that televises both major-league baseball and NFL football, and at this time of year it has its television crews spread out all over the country.

"We didn't think it was worth the gamble to get the extra equipment and the crews there and to clear the networks in advance," the spokesman said. "These things take time and for all we knew this series could have been meaningless."

"We appreciate and know the importance of this series now, but if we did televise it, or just the Monday night game, it would have thrown our whole play-off and football schedule off," the spokesman said. "We just weren't prepared for it."

He added that NBC has an option to carry 15 Monday night games next season and it "will probably take that option."

Senator GRIFFIN. Mr. Chairman, if I could add a footnote: I want to commend the ranking member for his remarks and associate myself with them.

He is right. While most of the complaints have come from football fans, the same problem, it seems to me, does exist to a lesser degree in the other sports, and the legislation I introduced covers baseball, hockey, and basketball, as well as football.

Senator COTTON. I thank the distinguished Senator from Michigan for that reassurance. But, I will have to tell him that I still am hoping and praying that the Red Sox will take it away from Detroit. (Laughter.)

Senator PASTORE. Senator Cannon?

Senator CANNON. No remarks.

Senator PASTORE. Senator Cook?

Senator COOK. Thank you, Mr. Chairman.

It is a pleasure to speak today in support of S. 4010, a bill to prohibit the blackout of a football, basketball, baseball, or hockey game if such event is sold out 48 hours prior to the scheduled start of the game. This bill was introduced by the chairman of the subcommittee, Senator Pastore, and was cosponsored by 11 Senators, including myself.

I am well aware of the inequities which the blackout policy creates for sports fans throughout the country. We can witness a prime example here in Washington, where every ticket to the Redskins home games is sold months prior to the opening game, yet most Redskins fans—or at least those who can't pull in Baltimore stations—are forced to drive at least 100 miles to be able to watch the televised action.

The inequity is at its worst when stadiums are built with tax dollars supplied by those who cannot buy a ticket. I recently received a letter from a disgruntled Cincinnati Bengals fan who lives across the Ohio River in Newport, Ky. I quote from his letter:

I am employed in Cincinnati and I pay a city payroll tax which actually makes me a Cincinnati taxpayer, so I along with thousands of others help pay off the deficit on the stadium. This is the Bengals fifth season and I and my family, we all dearly love the Bengals, have never been able to see even one game together, due to the fact that we cannot get tickets. We are actually helping to pay for a stadium to entertain the same privileged 56,000 every game, every year. . . . I say the ticket plans should be changed or all home games televised.

This is one part of his letter, Mr. Chairman, and I would like to put the balance of his letter in the record, if I might.

Senator PASTORE. Without objection, so ordered.

(The letter follows:)

NEWPORT, KY., *September 22, 1972.*

SIR: I am a resident of Kentucky and I was reading in a sport story, which I am enclosing, about your efforts to have professional football games, that are sellouts, to pass a law to force the owners to put the games on television.

I reside across the Ohio River from Cincinnati, Ohio, where of course we have our Bengals.

I have written, for several years, to all the Cincinnati City Officials about the situation here in Cincinnati that exists with our Bengals and I cannot even so much as receive an answer as nobody seems to care, or else they are afraid to take any action to rectify the situation.

As you well know we have a new stadium which we all love and appreciate.

This stadium, as well as all new stadiums, operates on a deficit every year, last year 1971 I believe it was in the red about 1½ million dollars now this money must be made up by the City of Cincinnati and that, of course, means taxpayers money pays the stadium deficit.

I am employed in Cincinnati and I pay a City payroll tax which actually makes me a Cincinnati taxpayer, so I along with thousands of others help pay off the deficit.

This is the Bengals fifth season and I and my family, we all dearly love the Bengals, have never been able to see even *one* game together, due to the fact we cannot get tickets.

I and my oldest son have managed to see 4 games in 5 years by waiting in line where occasionally we can purchase a *standing room* ticket and to get one of those we practically have to beg and grovel, sometimes we get a standing room ticket most of the time we don't.

Senator Pastore (D.-R.I.) mentions he is in sympathy with the poor people, like my family, who have to stand in line and generally don't get a ticket nor see the game on TV. He should see the lines I have stood in, taking off work early, trying to beg for a standing room ticket or two.

Since you are interested in doing something for the poor man, seeing professional games, I thought perhaps I may give my views on the subject to see if something could or can be done about making the ticket distribution more fair to all the fans.

Nobody in Cincinnati will help or even answer my pleas. The Bengals sell season tickets to all their home games and they always sell completely out for every game which leaves no tickets available for the average man other than a standing room ticket once in a great while.

For the Cleveland game in 1971 I took off work at noon, determined I was going to get 4 standing room tickets for my family, as several thousand went on sale. After standing in line all afternoon I did not get even one ticket as they sold out.

They will not sell standing room in advance only a day or two before the actual game. So the Bengals sell out every game and every year the previous year's season ticket holders again get first choice and again they are sold out.

And nobody gives up their priority for being on the season ticket mailing list, if they don't actually want them they will order and sell them to their friends or relatives.

I believe in 1972 the Bengals have, if I read correctly, 20,000 people on their season ticket waiting list.

We have people from out of town, that pay no city taxes, do not help pay for the stadium deficit and they get season tickets every year, while thousands of us taxpayers never get to see our Bengals.

We are actually helping to pay for a stadium to entertain the same privileged 56,000 every game, every year.

This I do not think is fair, it is like paying for a party and then not getting invited.

Why should thousands of us help maintain a stadium that only a select privileged few get to enjoy year after year.

I feel I am entitled to some consideration, as a taxpayer, but none is ever given.

It is very discouraging standing around the stadium, before the game, hoping you can purchase a ticket or two from somebody, perhaps standing room, while the privileged stroll in to their same seats they get game after game and season after season, makes me feel as though the whole thing is very unfair.

As I say I have written for years about the unfairness of the ticket distribution, the Bengals belong to all of us, not just a select few, and we should all be given an equal chance to purchase tickets.

I say the Bengals should be forced to only sell say 35,000 season tickets, or somewhere around that number, and leave 21,000 tickets for the general public each game so we can possibly see a game now and then and enjoy the Bengals and our stadium like the rest of the people do.

But the Bengals sell all the seats to the same people year after year and don't even leave the crumbs for the rest of us.

Everybody, especially me, cannot afford to purchase season tickets at \$70.00 each, but once in a while a person can afford 2, 3 or 4 tickets to a game but one cannot do that as the season ticket holders have them all.

As far as I am concerned and thousands of other people also we may as well not have the Bengals we never get to see them play, we only get to help pay for the stadium so the select few can enjoy the games. The Bengals, of course, don't want to change their ticket distribution plan as they have it made with their set mailing list and do business with the same people every year.

I also suggested to all our City Officials that if they can't be forced to limit their season ticket sales they should send their tickets out to the same people for 2 years, then destroy the mailing list and put all tickets up for sale again to give a broader spectrum of fair an equal chance to obtain tickets for 2 years and again go through the procedure, I feel this is more fair than the same fans every year.

If they cannot force the Bengals to do that then I suggested all Bengal home games should be *televised*. That way at least we could see and get in on some of the action. I would imagine my gripes, if you wish to call them that, are the same all over the country as they all sell out on a season ticket basis only.

I would say the majority of Bengal season ticket holders are from out of town, where of course, they do not have to help pay for the stadium. The city doesn't mind taking money from me, from payroll taxes, so they shouldn't mind attempting to change the ticket distribution plan to let me enjoy what I am paying for. I wonder how many out of town fans would be willing to pay a percentage of their income to help pay for the stadium. They just want to come in town, enjoy the stadium and go back home.

Where thousands like me don't get to enjoy it, only pay for it. I say the ticket plans should be changed or all home games televised.

It seems you and a group of other Senators are trying to help us poor people as Senator Pastore describes us, and I thought perhaps you all may be of a mind to hear my suggestions.

Thank you sir, and by your past actions may I say you have certainly been a credit to your high office and our great State of Kentucky.

Good luck and may God bless.

Sincerely,

PAUL TAYLOR.

Senator Cook. This fan is not atypical. He is only one of millions of fans who are denied the opportunity of seeing their favorite teams and players in action. They contribute their tax dollars and their emotions, but get little in return. This situation must be corrected.

Earlier this year this committee held 4 days of hearings on a bill which I introduced that would establish a Federal sports commission to issue rules to resolve this and other problems. We heard various witnesses discuss the blackout problem, and they expressed views as dissimilar as those we will hear during these sessions.

On balance I think it fair to conclude that the public favors some limitation on the blackout antitrust exemption. Whether the chairman's bill, S. 4010, is the precise answer, or whether some modification is preferable, I am sure these hearings will shed a revealing light on the problem and show us the proper direction toward the solution to this situation.

I thank the chairman for the opportunity to offer this statement this morning.

I might say, Mr. Chairman, another thing that worries me is not so much the argument that has been put forth by the Commissioner that he feels somehow or other there will be a decrease in the sale of tickets. After all, there are 28 major league football teams, and they sell over 95 percent of all their tickets well in advance of the beginning of the season.

What bothers me is that the sports establishment really wishes to move into the control of sporting events on cable television, and possibly to theater broadcasts. Maybe one of these days it will become of such value to watch a professional football game that we won't be able to see it on television at all, but will have to pay for it on cable television, or will have to go to a theater to watch our favorite team or sport.

So I thank the chairman again for the opportunity to offer the statement this morning, and I hope these hearings will be productive and informative.

Senator PASTORE. We may add another element, too, not only the fact that the stadium is built by taxpayers' money but the fact that the air waves belong to all the people. After all, they are being given an opportunity to send it over television nationwide, these games, and the gross intake last year was between \$45 and \$50 million.

Now, that is a lot of money. That is money that the league is making only because of the facility of television, and you have to realize that this is an element of the public domain.

Then on top of it all, rather than have each team negotiate with the network, we went a step further in 1961, we gave the league the authority to negotiate a package. Therefore, the league weak team can lean on the strength of the important team, which helps them to lift the price that each team must get.

I think they owe the public something for utilizing the public domain, and because Congress has given them the right of an exemption under the antitrust laws, so that the league itself can negotiate for all the teams in the league. This puts them in a very strategic position when they are negotiating with the networks, because they are getting a higher price.

In other words, we have eliminated the competition in establishing what price the network would have to pay. Therefore, the strong team is the crutch.

I don't say this in criticism, because after all, this is a business technique and they have a perfect right to exercise it. They ought, however, to account a little bit for that faithful fan, and they have millions of them who can't buy a ticket even if he wanted to, because no tickets are obtainable. And at the same time he has to be satisfied without the game.

When this whole thing started they went even so far as to black out any other game being played within the league, and then they relented after a while and they allowed other games to be shown. But that doesn't enable the people here in Washington to see the Redskins when they are at home.

They want to see the Redskin game, and they have to wait, of course, until the game is played out of town to have this opportunity, and the same goes, of course, with the Patriots in New England and all over. All we want is a sense of reason in this.

No one wants to empty out the stadiums; no one wants to take any money out of the pockets of the league, or of the various games, or the players of those games, or the people owning the league, or the various teams in the league.

All we are saying here is that we want a sense of reason. Inasmuch as Congress was good enough to you, and now you in turn be good enough to the people of the community. After all, the whole thrust of the communications act is predicated upon public service.

Senator Cook. I would like to add one more point to that, Mr. Chairman.

As you well know, prior to the exemption that the Congress gave professional football in order to facilitate merger, they did a fabulous job of promoting the Super Bowl. They still call it the Super Bowl when, in fact, it really isn't a Super Bowl at all.

You may have two teams play in the Super Bowl who have already played each other two or three times in the season. So it is really a playoff of the divisions within the league, whereas before, when you had the AFL and NFL, the Super Bowl teams had not played each other during the course of the year. It was a matter to see who was the champion of the country, as such.

Now, you have no more than two teams out of the same league who conceivably have played each other once or twice in the course of the season, who now play each other in the so-called Super Bowl, which is worth \$5 million to \$7 million to the league. That is quite a thing for a league playoff, when we stop to think of it in monetary terms.

Senator PASTORE. Of course, they do make a lot of people happy. Those who like to see the game.

Senator COOK. Nobody in the community where it is located can see it, though, Mr. Chairman.

Senator PASTORE. Senator Beall?

Senator BEALL. Thank you, Mr. Chairman.

I will put a longer statement I have here, in the record, and abbreviate it.

Senator BEALL. I am happy to join as a cosponsor of this bill. I speak not only as the representative of one football constituency, but two, because I represent the Washington Redskin constituency and the Baltimore Colts constituency.

I might say, for too many years, both of these areas have been blacked out because the taxpayers who have provided the stadiums in which these teams play their games, haven't been able to get seats.

I have been one of those taxpayers who hasn't been able to get a seat. I have had more success since I became a member of the Senate, than I had prior to that time.

I think it is time that we take into consideration the fact that taxpayers' money is being used to provide places where teams promote and play these events, and there is a great deal of taxpayer interest in the events, and the people, therefore, should have the opportunity to see the games.

The blackout policy is more far reaching than one could assume. I happen to live out in the mountains of Western Maryland, 155 miles from here, and when the Colts are home and when the Redskins are home, I still can't see a home game 155 miles from Washington, because out there you either put an antenna on your roof so that the roof is higher than the mountains, or you have a cable system, and the cable, of course, relies on the Baltimore and Washington stations in order to feed their subscribers.

So, as a member of the cable system paying \$5 a month to the cable system, I still can't see the home games, and I think it is time that we take into consideration the fact that when stadiums are full, there is an obligation on the part of those who are promoting the games to make sure that as many fans as possible can see them.

And, although I like to go into a hearing on legislation with an open mind, this is one where I am convinced that it is in the public interest to pass this legislation.

(The statement follows:)

STATEMENT OF HON. J. GLENN BEALL, JR., U.S. SENATOR FROM MARYLAND

Mr. Chairman, speaking as a senator who represents not one, but two professional football constituencies, I have great interest in S4010.

Television and pro football have teamed up to provide the American people with a form of entertainment that, for many, is almost a way of life between August and January. It begins with the exhibition season and college all-star game, and doesn't end until the post-season bonanza of play-offs, all-pro games and the super bowl.

At one time or another during all this, the public gets to watch pro football on TV Friday night, Saturday night, Sunday (when there may be a total of four games if both networks schedule a "doubleheader") and again on Monday night.

Under these circumstances it sounds incongruous to suggest that the American people are being deprived of any opportunity to follow pro football on television, and in the general sense, of course, they are not. But for half of the season, the vast majority of hometown fans are disturbed because they cannot watch their team play either at the stadium or on their own home television.

The reason, as we all know, is the National Football League Rule that home games cannot be televised in the local viewing area. We all know why. The NFL owners feel that televised home games would hurt them at the gate.

I have yet to hear any facts that substantiate this claim. Yet it is because of this unsubstantiated notion that millions of pro football fans around the United States are blacked out each week when their home team plays a game that only 50,000 or 60,000 hometown fans can watch. Here in Washington, for instance, every seat in Kennedy Stadium is sold before the season even begins. In Baltimore, all but a few thousand seats are held by season ticket purchasers, and it's a good assumption that Memorial Stadium would be sold out for the season, too, if the Colts decided to put all seats up for sale on a season ticket basis. In fact, season tickets have become such a prized possession that some people reportedly have passed them on to other members of their family in a will.

As a result the hometown fan, who may not have the money for season tickets or the good fortune to get a single game ticket, either listens to his favorite team on the radio or watches some other televised game. It is because of this callous disregard for the hometown fan that only 56,000 Baltimoreans were able to watch the once-in-a-lifetime game two weeks ago when two of the greatest quarterbacks in football—Johnny Unitas and Joe Namath—put on a record-breaking performance.

If a home game is sold out, there is no good reason that it should not be televised in that area. After all, when the NFL considers new locations for a franchise, isn't the enthusiasm for a team supposed to be one of the highest priorities? It seems to me that the best way to build enthusiasm would be to let the hometown fans watch their team on television if there is no other way to see the game.

I am aware of the private capital necessary to field a pro football team, but there is also a tremendous investment of public funds that is conveniently overlooked.

For instance, take a look at where the teams play. Nearly all of them are operating in municipally-owned stadiums, some of which were built solely for the purpose of obtaining or retaining a pro football team. Consider the kind of investment an owner would have to make if he had to build and maintain his own stadium, pay the taxes on the stadium and its parking lots, and pay for the access roads, water and sewer lines, electricity and lighting, stadium attendants, traffic and security units, etc.

Now look at who is paying for those stadium facilities. It's the local taxpayer, who also happens to be the same local fan who never gets to see his team play in the stadium he helped to pay for because he can't beg or buy a ticket. And just because of an NFL rule, he can't see the game on television, either.

Well, the owner may be entitled to a sellout to meet his expenses, but the fan should also be entitled to watch his team play on television if the game is sold out. If there was a compromise that was fair to everyone, it would have to be this bill to end the systematic discrimination against the pro football fan who can't get tickets to see his team play.

By setting the deadline for a sellout 48 hours in advance of gametime, it gives ample opportunity for hometown fans to purchase tickets, if by some remote chance any are available. The owner can't get anything more out of a home game than a sellout, so he has nothing to lose except the enthusiasm of the local fans by insisting on TV blackouts.

The people were once the sole source of support for professional football teams but the incredible financial success the sport has attained through television seems to have made many lose sight of this fact. The local fans have a legitimate complaint that the owners have ignored for too long.

Professional football enjoys a special monopoly status because of legislation passed by Congress, and I believe the time has now come to pass this piece of legislation to make the management of these teams more responsive to the community. The bill will protect the financial interests of the owners while also ending the unjustified discrimination against local fans.

Senator PASTORE. Senator Moss?

Senator MOSS. I have no comment, Mr. Chairman.

I am very interested in this matter, like every other football fan, but I have no comment to make at this time.

Senator COOK. Mr. Chairman, may I add one thing, because I think it is interesting in relation to our hearings and what Senator Beall has said, in relation to being on the cable.

Our testimony, I believe, to this, was that the blackout applied to a 75-mile radius of the particular team. We now find out relative to Senator Beall's statement, that it applies to 150 miles, if not farther. So, the 75-mile rule is not really—

Senator PASTORE. No; the 75-mile rule only concerns particular stations.

Senator COOK. I understand.

Senator PASTORE. Yes; if you look at a station's service area you get into much more. But the point that Senator Beall makes is that if the game emanates from Baltimore, no matter where he lives, he is out. Once they shut out Baltimore, he is out.

Senator COOK. It would be interesting to get somebody from the Federal Communications Commission to come here and be an observer relative to their promulgation of that 75-mile rule when, in fact, if it applies to those that are on cable, that could be 150 miles or 300 miles.

Senator PASTORE. It is not a rule, it is a contract. It is the contract that the league makes with the network.

We have a list here that shows pretty much the cities, and I am going to ask unanimous consent that it be placed in the record at this time.¹

Senator COOK. Good.

Senator BEALL. I would like to point out something that happened to me 2 weeks ago, Mr. Chairman.

I happened to be home, and I settled down in the easy chair preparing to watch the Baltimore Colts play, and I turned on a station in Hagerstown, Md. They were broadcasting another game, and everyone was operating under the supposition that they were going to change to the Baltimore game.

They did change to it, and we saw the introduction to the game and saw the Colts' theme song, and all of a sudden we were back watching a movie or something of that sort.

We called to find out what happened.

They said they just remembered they couldn't broadcast the game because they were within 75 miles of Baltimore.

Senator PASTORE. Is Congressman Randall here?

¹ See p. 210.

STATEMENT OF HON. WILLIAM J. RANDALL, U.S. REPRESENTATIVE
FROM THE FOURTH DISTRICT OF MISSOURI; ACCOMPANIED BY
HON. GEORGE LEHR, PRESIDING JUDGE, JACKSON COUNTY
COURT, KANSAS CITY, MO.

Mr. RANDALL. Yes, Mr. Chairman.

Mr. Chairman, and members of the subcommittee: First, let me express my appreciation for the opportunity to be heard this morning on S. 4010, which has come to be known, I think, as the "Blackout Amendment."

The gentleman from Rhode Island, the subcommittee chairman, has earned and deserves the commendation not only of those in his own body of Congress but also those of us from over on the House side of the Capitol for his leadership to amend the act providing the exemption from the antitrust laws which permits the blackout of home games.

There have been several bills introduced over on our side in 1970 and 1971 from Members in Michigan, and in New England and other places, but so far as I know our bill is the only one that is identical to that of the chairman of this subcommittee. It was introduced just a week to the day, the 27th of September after S. 4010 was introduced on the 20th.

I appear before you this morning in support of S. 4010.

With me is Judge George Lehr, Presiding Judge of the Jackson County, Missouri Court, whom I might add parenthetically will be the last presiding judge because a new form of government will be inaugurated January 1, 1973. He will become County Executive.

Mr. Chairman, I am here as a witness this morning because I represent the eastern suburbs of Kansas City, Mo., in which is located Arrowhead Stadium, the home of the Kansas City Chiefs.

About 30 percent of my constituents are Jackson County taxpayers who pay taxes to retire the bonds which were issued to finance the construction of Arrowhead Stadium. It makes me sad to have to admit that these same constituents now find that all tickets for all individual home games, as well as all season tickets have been sold, and none are now available for purchase by anyone—but to make matters worse, because of the exemption of the antitrust laws, all home games are regularly blacked out in all the area where the taxpayers live who are paying for the stadium.

Judge Lehr will shortly provide the statistics pertaining to the financing of Arrowhead Stadium. He will also describe the allotment of tickets which the Chiefs management have allotted to residents of Jackson County, Mo. I shall not take your time to repeat these details.

Arrowhead Stadium seats about 80,000. It has just been completed. The first game was played there about 30 days ago. It is quite an experience to see a football game there—that is, for those who are fortunate enough to be able to get tickets. We do have a great football team at Kansas City. A while back Jimmy the Greek was willing to bet the Chiefs will play in the Super Bowl. Support for the Kansas City Chiefs is so great in the Metropolitan Kansas City area that not only are no season tickets available—there are no individual game tickets available for single games, or even standing room for the remaining games on this year's schedule.

Mr. Chairman, the situation at Arrowhead Stadium, I dare say, is not much different from the situation in several other National Football League cities across the Nation. Those who stand in line waiting and hoping for a chance to get tickets for the games of the Kansas City Chiefs are not different from the long lines in every city of the National Football League.

There is no indication, no one has said, well, here, back of the line, you can't get any tickets, you stand in line and wait and see what happens.

I think this thing may become so frustrating that I think a witness put in a quip not long ago when he said the time will soon come when the right to purchase professional football tickets would be something that which would be passed from father to son by will or inheritance and from one family to others by such a thing as a quit claim deed.

Senator PASTORE. Almost like a good registration plate on your automobile.

Well, when I was Governor of my State, that was one of the biggest headaches we had. They even used to will the registration plate to some descendent, as though it were personal property.

Senator COOK. I might say, Mr. Chairman, that is the way boxes to the Kentucky Derby are handled now.

Mr. RANDALL. It is not so amusing to those who send their checks about Easter and they get a letter around Labor Day that all the tickets have been sold.

Mr. Chairman, it is a source of extreme frustration for taxpayers who pay for a stadium to find that outsiders are getting more tickets than they are. We recognize that no stadium could be built large enough to accommodate all the people who pay taxes to retire the bonds which pay for most of the stadiums in the cities of America.

We received several hundred letters during the course of the year from our constituents, and there was a new crusade started by a newspaper in the city of Independence, a paper called the Examiner. It has a circulation of 25,000 or 30,000. They published a coupon and already approximately 25,000 coupons have been returned. It was listed "I want to see the Kansas City Chiefs home games televised locally."

I don't have the latest figures, but it is mushrooming.

I was in Kansas City this last weekend and I visited two of our local television outlets, and I also had occasion to visit some of our radio stations and the editors and executives of our metropolitan morning and daily paper known as the Kansas City Star.

There seems to be the common consensus concerning this blackout amendment.

They said: "Who could possibly oppose the enactment of a piece of legislation that would lift the blackout only if all tickets were sold 48 hours before the beginning of a game?" And "Who could possibly be hurt by this kind of enactment?" Another said "I don't see anything wrong with an effort of this kind," and, "I think the law should never allow a blackout."

Mr. Chairman, as the gentleman from Maryland said a moment ago, I thought maybe I was prejudiced, I thought maybe I ought to get off and try to make an objective look and make an analysis and see who,

if anyone, could be hurt or harmed, so I tried to prepare some logical opponents, if you please, sort of stand off here and be the devil's advocate and see where the opposition would come from.

First, I thought of the owners of the franchise. I suppose they will object to the lifting of the blackout. I suppose they will say they feel compelled to oppose this bill by saying they are going to have to protect their ticket holders who go through heavy traffic to reach the stadium. Maybe they believe this would diminish a sale some time in the future.

Of course their argument is that sellouts would be affected in the future. Of course, I believe that to be a non sequitur. It just plain doesn't follow, because if the gate is not sold out, then this legislation would not apply.

Secondly, there might be some objection raised, and I did receive a few objections from the radio stations. They enjoy right now a sort of a monopoly, and they might lose revenue, but certainly they still have their big audience in the cars during game time. Even so, if there is some inconvenience, I think we must resort back to the question of what is going to be the greatest good for the greatest number in a situation of this kind.

The third source would be what may be coming—CATV's was mentioned a moment ago. We understand in our area there is already an effort made to pipe back from areas such as Pittsburgh, Kansas, or our capital, Jefferson City, Mo. What will happen to the theaters they are talking about, and ultimately into the homes?

Of course, in our view to meet this objection, certainly the franchise, the networks themselves will very likely take care of this by some form of litigation. They could say "Here, we enjoy this exemption at the present time and what you are doing, you are doing by indirection what cannot be done directly, so we are going to take care of you with a lawsuit."

The fourth objection I see would be some inconvenience to the hotel or the motel operators, and we do have a lot of folks who journey this 50, 60, or 75 miles away to get within range of either the TV station in the center of the State or the southern part of the State. Of course, motels might have a little detriment, but we understand it is very difficult to get a room almost anywhere any night anyway on the interstate highways.

Mr. Chairman, let me again express my appreciation for being allowed to testify. I hope in the event we do not adjourn sine die and we come back, which we hope won't happen anyhow, that we can get some hearings on our side.

I have talked to some of our members, and we have had a little problem with hearings in the Judiciary Committee in our side in the past, but we are prepared to use every parliamentary proceeding at our disposal over there in an unwieldy body that doesn't have all the advantages of unanimous consent such as over here, but we are going to start a discharge petition and try to get something going. We hope it is enacted on this side and comes to us in that way.

It is a reasonable bill and a fair bill and it should be enacted, and we hope we have a chance to act on it in the other body before the expiration of this football season.

Senator PASTORE. Thank you very much for a very, very fine statement.

You have developed points that have been of great concern to members of this committee.

As a matter of fact, the enthusiasm is so high and the spirit on the part of fans who watch these games is so high, that if it is their favorite team they will even travel 50 or 60 miles in order to see the game.

This is how serious this is.

I have a paper here that pretty much bears out what you have already said. It is the Fairfax County Standard, and they have a byline here "Skins," meaning the Redskins, and they comment on this point.

Here are some statements. "Banning the TV Blackouts Is a Great Idea," commented the district supervisor, Joe Alexander.

"I am a season ticket holder, but it won't bother me at all if the home games are shown on TV. I prefer to go to the stadium anyway."

They give you the story that people are not going to go to the stadium. Anybody who wants to see a football game goes, snow, rain, or what have you.

There again, I think everything has to be weighed.

Judge, did you want to say something?

Judge LEHR. I would like to comment that we have been through the construction of a \$100 million facility that the taxpayers are paying for.

Senator PASTORE. How much money did you say?

Judge LEHR. \$100 million of taxpayers' money is now involved in the stadium where we have over 700,000 constituents in our county, and fewer than 40,000 of those are able to see the games in the stadium because of the metropolitan season tickets which were taken up.

I think this does speak to the investment that the taxpayer has in the physical facility and he cannot, Mr. Chairman, see a game in the facility because he cannot buy a ticket or he cannot afford a ticket, if he could buy one.

I want to preface my remarks by saying we are very proud of our professional sports franchises, and we feel we have fine franchise owners, and we consider them as assets to the community. They are subsidized assets, but they are assets.

In June of 1967, when we were about to lose our baseball franchise and when the need for a new football facility was becoming most apparent, a \$43 million general obligation bond issue was proposed to the taxpayers of Jackson County for the purpose of building twin stadiums; one for football and one for baseball.

The original design also included a rolling roof over both of the stadiums. At the same time six other proposals were presented to the voters, including new hospital facilities, new juvenile facilities, flood control and parks, roads, courthouse improvements, and a geriatric center. On June 27, 1967, all seven bond issues passed by the required two-thirds majority with the sports complex receiving approximately 69 percent. The Jackson County Sports Authority, which has administered this project, immediately began planning for the construction of the facility.

Mr. Charles Finley did succeed in moving the baseball franchise but through the efforts of many people, including our senior senator

from Missouri, Stuart Symington, the American League did grant us, after a 1-year absence, another franchise which was very fortunately awarded Ewing Kauffman, one of Kansas City's finest citizens.

Finally, in the fall of 1968, ground was broken for the new sports complex. Contracts were let and lease negotiations with both teams were begun. Due to labor strikes and various cost escalations, it soon became apparent that we would not be able to provide all that had originally been planned for the \$43 million. The first major item to be deleted was the rolling roof.

It further became apparent that the stadiums themselves could not be constructed with the original budget of \$43 million even after the exclusion of the rolling roof.

It had been originally anticipated that stadium rentals would be utilized to help retire the \$43 million general obligation bond debt. It became apparent that these rents would be necessary to support the issuance of revenue bonds to properly complete construction of these stadiums, so that the money that was anticipated to pay off the debt, in fact was utilized, the public money that would have paid off the debt was utilized to issue additional revenue bonds.

In lease negotiations with the Chiefs and the Royals, the Chiefs agreed to pay a guaranteed annual rental of \$510,833 for a 25-year term and the Royals agreed to pay \$400,000 annually for a similar term.

Senator COOK. How many years?

Judge LEHR. 25 years, both leases.

It is our understanding that these guaranteed rents by both the Chiefs and Royals are the highest guaranteed rents paid by franchises in these two sports in the country.

The guaranteed rents, totaling over \$900,000 annually, supported the issuance of an additional \$8½ million in revenue bonds purchased by the general public to meet the escalating construction costs.

In addition to the guaranteed annual rentals, the Chiefs and Royals pay percentage rentals of 6 percent of gross receipts in excess of \$5 million and 5 percent of gross receipts in excess of \$7.5 million.

Even though the Chiefs have played only five home games so far this season, it appears that they will be paying percentage rentals.

It now appears that the \$43 million general obligation bonds will be retired from property taxes paid by the citizens of Jackson County.

The only possibility of getting any relief other than property taxes is from the percentage rentals. Therefore, I think it is important to note that it obviously benefits Jackson County to maintain capacity crowds or to utilize the stadiums to their fullest capacity.

We wouldn't be supporting legislation such as this proposed legislation that would in any way bring about anything other than full utilization of the facilities. Each of the owners has put in over \$10 million of their own money into each stadium. We have two stadiums, one for baseball and one for football. The owners have put in their own money for scoreboards, private suites, and so forth.

The new football facility provided 78,034 seats which were considered by everyone to be more than adequate for the expected demand. However, we were very proud to see that when tickets were placed on sale, we immediately broke all records by selling in excess of 70,000 season tickets in the new stadium 1½ years before the first football

game was played. Season ticket sales were stopped at that point and, in addition, thousands of individuals are currently on a waiting list, if any season tickets become available.

The chances are the individual will die long before they move up on the waiting list.

The Kansas City metropolitan area is composed of 1,300,000 people, of which 670,000 live in Jackson County, although Jackson County has the total taxpayer investment in the complex.

Due to the practice of many businesses purchasing tickets in large blocks, it is difficult to ascertain exact figures, but it is generally conceded that over 50 percent of the season ticket holders are not residents of Jackson County, which is paying the entire bill.

This, of course, has caused considerable controversy in our area. It did, in fact, even lead to a lawsuit which was settled in part by allowing Jackson County taxpayers to purchase up to 5,500 tickets per game on a priority basis, after the 70,000 season tickets were allotted.

Mr. RANDALL. There is a State line that intersects the metropolitan area. I don't know how many Kansans come over and get our tickets.

Judge LEHR. My constituents say 90 percent of the license plates are from Kansas. The figures don't show that.

This priority sale took place for a 10-day period prior to the opening of the regular season.

To illustrate the demand for tickets, a line for this priority sale began forming at noon the day prior to the opening of the ticket window, at 8:30 the next morning.

At midnight 400 people who could purchase up to 20 tickets per game with a Jackson County tax receipt were already in line. By morning the line was over a quarter of a mile long. It should be noted here, however, that this was in contrast to a similar priority sale for the preseason games, which left one game 1,500 seats short of selling out.

Senator PASTORE. If I may put in a pun—Pete Roselle will testify and he will have every network with the cameras and lights here, and here we are presenting the case on behalf of the people, and it is a shame they can't listen to you and see you over television. The argument you are making seems significant today. The cameras are not here. We are suffering a blackout ourselves.

You wait until tomorrow. This place will be illuminated like heaven knows what.

Senator CANNON. Mr. Chairman, maybe we ought to have a blackout tomorrow.

Senator COOK. Let's hear a motion from someone on the committee that they not cover it.

Senator BEALL. Unless there is a full house.

Senator COOK. And if we don't have standing room, that will take care of that.

Judge LEHR. I would like to add that we feel they do a good job of merchandizing their product.

Senator PASTORE. But look at the break we gave them under the antitrust law.

Senator COOK. Let me ask you a few questions before you get through with that.

What you are in fact saying is that the only indebtedness of the entire operation that will be retired by the season ticket revenue is the eight and a half million that you had to issue in the nature of industrial revenue bonds, is that correct?

Judge LEHR. Right.

Senator COOK. Is Jackson County the primary guarantor of those bonds?

Judge LEHR. The lessees are the guarantors, but the money that would have been provided to Jackson County to pay off the additional property taxes, such as road networks, but the moneys which would have come in are pledged for the retirement of the revenue bonds.

Any excess rentals that might come from—there are various priorities, including further improvement of the stadiums. These priorities must be determined before they go into paying off any of the general obligation bonds.

I am telling my constituents the general obligation bonds will be paid off by property taxes at this time. I do not see any major relief from anything other than property taxes to pay off the \$43 million.

Senator COOK. Is the eight and a half million dollars a private issue, and did the county have to pledge the leases to that private issue?

Judge LEHR. Yes. We have revenue bond authority through the Sports Authority, but the leases are pledged. All moneys must first go to pay off that.

Senator COOK. But they are in the nature of general obligations of the county, are they not?

What I am saying is, what is the tax base for the eight and a half million dollars worth of bonds?

Judge LEHR. If the bonds were defaulted on, they would only look to the stadiums and the leases. They would have a first on the stadiums and leases and they would collect from the owners. The owners, by signing the leases, Mr. Kauffman and Mr. Hunt, they have in effect signed the leases—not personally signed, but signed the leases as the baseball and football club, and these moneys are then used, this \$900,000 is then used to retire the eight and a half million dollars.

Senator COOK. Do you have a tax on securities in the State of Missouri?

Judge LEHR. No, we do not. We have an intangible tax.

Senator COOK. The point I am trying to make is, if they, in fact, bought those eight and a half million dollars worth of bonds in the stadium authority, do they have an intangible tax rate, or are they exempt?

Judge LEHR. I am not sure I can answer the question. It is my understanding they are exempt.

Senator COOK. The point I am trying to make is that they guaranteed an additional eight and a half million, but they pay no intangible tax, because it is in the nature of a public corporation.

Judge LEHR. They are tax exempt bonds. In fact, in addition to the eight and a half million, Mr. Hunt utilized another four and a half million of these bonds to make improvements in the football stadium.

In other words, he personally guaranteed another four and a half million which will, in effect, be tax exempt.

Senator COOK. He is guaranteeing a tax exempt bond, though?

Judge LEHR. Right.

Mr. RANDALL. Mr. Hunt is Lamar Hunt, whose credentials are quite good to guarantee a bond.

Senator COOK. I have no objection to that, Congressman, and I agree with what you are saying. I am only saying these are tax exempt bonds, and the authority issued 13 million of tax exempt bonds, which means that the revenue from those, or the coupons from those, are tax exempt.

Judge LEHR. Yes, sir.

I think that I would like to point out here, with Mr. Hunt and Mr. Kauffman, we couldn't have a better relationship, but I think that is secondary. They are cooperative, and will work with us in any way possible.

But they are in the business of running a baseball and football team, and they are in the business to make a profit.

Senator COOK. What is the term on the 13 million?

Judge LEHR. It is 20 years.

Senator COOK. They are 5 years shorter than the long-term leases on the stadium. Even though there is a personal guarantee, there are 5 more years on the long-term contracts.

So he took himself in for 20 years, but his major lease for the 43 million was 25, so he has a 5-year overlap on a 25-year option.

He didn't have to worry about that guarantee so much, did he?

Judge LEHR. That is right, sir.

Senator PASTORE. The point you are making is that all the taxpayers in that community are supporting the facilities, and only a few are able to buy a ticket.

Judge LEHR. Very definitely.

Senator PASTORE. And they ought to be given a break.

Senator COOK. The point I was getting at also, if I may, Mr. Chairman, is this: Judge, were you judge of Jackson County at the time the original 43 million was originally negotiated?

Judge LEHR. No, sir, I was not.

Senator PASTORE. Were you aware of those negotiations?

Judge LEHR. As far as the leases are concerned?

This has been a source of great controversy in the community because the leases were generally not publicly between the administration at that time.

One big point in our administration is that we have open meetings, and there were lawsuits and a great deal of controversy in the community regarding the negotiations.

I might say that the moneys which we are receiving from these leases are, I think, based on other leases I have seen, the moneys are comparable or better than what we are getting other places in the country, but still we are providing a major subsidy to professional sports, and whether or not that subsidy comes back to the trickle-down theory or not could be argued all day.

We love the teams, but we are subsidizing them.

Senator COOK. The point I am trying to make, was there also controversy that if the community did not provide these facilities, it was possible that these franchises might move from Kansas City?

Judge LEHR. Of course, very definitely. In fact, very specifically to the point, when we voted on June 27, 1967, it had already been said that the baseball franchise would move if that did not—and it did in

fact leave for a year—and our fine senior Senator Stuart Symington had a great deal to do in a Chicago hotel room with the league owners, indicating we had better have a franchise back in Kansas City.

But very definitely—the baseball franchise was going to move and there was talk that the football franchise could no longer stay there.

Senator COOK. Was that part of the advertising to get the \$43 million issue passed by the citizens of the community—namely—if we don't get this, we are liable to lose our football and baseball team?

Judge LEHR. No doubt about that, Senator.

Senator COOK. That is the same situation as applied in Buffalo, and I am assuming that it has applied in many other communities throughout the country.

Mr. RANDALL. In the crusade that has been conducted by the small people, if we had known the situation obtained today, we would not have voted for the bonds. We thought we were going to have our chance, our fair share, the taxpayers of the country in which the stadium is located. They come back again and again. We would have had second thoughts about voting these bonds.

Judge LEHR. I would like to add here that the Kansas City Chiefs have cooperated in every way possible in such things as the priority ticket sale.

With a successful football team and a new stadium, the demand so far exceeds the number of seats available that we have thousands of unhappy taxpayers in Jackson County, as well as many others in the metropolitan area, who cannot see a game.

Needless to say, the 5,500 for every regular season game were sold the very first day. Therefore, over 10 days before the opening kickoff for the first regular season game, not only had all seats been sold but considerable standing room had been sold to some games and some standing room had been sold to all games.

In addition to the stadium costs, we can attribute approximately \$15 million to \$18 million of either city, county, State, or Federal expenditures for roads. These figures can be disputed because it is difficult to say what roadwork would have been done or would not have been done in the geographic area of the stadiums had the stadiums not been there.

In summary, I would say that we have a taxpayer investment of some \$70 million in these twin facilities and related road network.

If you want to include the interest that will be paid on that debt, you can certainly run those figures up to well over \$100 million.

I think it is obvious that in direct-lease payments, the taxpayers will not receive back their investment over the period of the leases.

I think if you consider a 1-percent return on the investment, that is good.

Senator PASTORE. Which they don't regret at all. They want the teams there; and the games there; and they want a full house.

All we are saying is that when that happens in any particular game when you have a sellout 48 hours before the game time, then why not put it on television so that all the taxpayers who have made the facilities and the playing of the game possible may see it, too?

That is all it amounts to. As the Congressman said, I can't for the life of me see how that is going to hurt anybody.

You take the next Sunday or the next time they play, if they don't sell out, then you have the blackout.

Judge LEHR. As far as we are concerned in Kansas City, if everything is sold 10 days prior to the season, yes or no, because we are so far oversold 6 months prior to the season that we would televise everything.

Senator PASTORE. I know, but we didn't want to go that far. It could be argued that this might discourage people from buying a season ticket.

All we are saying is that in any particular game where there is a sellout then televise it in the home territory.

As I said before, we are not trying to bankrupt these teams. We are not trying to do that.

We are trying to help somebody.

Judge LEHR. However, I don't think in any way we have been hoodwinked or misled by the professional franchises.

What these franchises and stadiums do for the local economy and for the image of the community is certainly of significant value.

That value, however, is very difficult to put in dollars and cents.

At this time it is apparent that professional sports in Kansas City are to a degree being subsidized. It is a fact that the subsidy was authorized by over a two-thirds vote in a particular election.

The demand for football seats far exceeds the number of seats available. There will not be an empty seat in the football stadium this year as all have already been presold.

It is, therefore, my feeling that in view of these facts, the taxpayers of Jackson County and the fans of the surrounding areas deserve to have local television for the Chief's games.

Thank you very much.

Senator PASTORE. Thank you.

Are there any questions?

Senator BEALL. One brief question. Backing up to the financial arrangements, when you talked about the seating capacity and the gross receipts, as I understand it, you have everybody that goes in there, and then you have the fancy suites that people may buy over a long period of time.

Judge LEHR. Yes, sir.

Senator BEALL. Who gets the money from those?

Judge LEHR. The suites sell from \$9,000 to \$24,000 annually. The money from those goes to the Chiefs. They have total operating rights on the stadium. They get the receipts from the Golden Circle Suites, and there is television with replays in all the suites.

They are not blacked out.

Senator PASTORE. They have a cocktail lounge, too, do they not?

Judge LEHR. Yes; a club and a cocktail lounge. The revenue from the suites, it was not in the original leases. We went to court and got the leases changed. They pay not any of the \$9,000 to \$24,000 per suite, per year.

But, they do, in effect, pay a percent of the net income from the suites and from the clubs. It is a very involved accounting.

Senator BEALL. It is included as part of the gross receipts?

Judge LEHR. No; only the tickets they buy to get through the gates, are included as part of the gross receipts.

Senator BEALL. How long is the lease on the suites?

Judge LEHR. You must sign a 5-year lease and there are 92 suites. Anywhere from \$9,000 to \$24,000 annually.

Mr. RANDALL. Let me tell you when you are in the suites, it is a mighty pleasant way to see a game.

Senator COOK. I think this violates the rule of the league, itself, if it says that a game cannot be televised within 75 miles of the location. They, in fact, televise within the suites at the stadium for the benefit of replays.

I think, if some enterprising sports fan knew that, they might well file a lawsuit and say, "If you can televise it to 92 suites, you can televise it to the community."

Judge LEHR. In our press box area, every two newsmen have their own television set between them to watch the replays to make sure the reporting is possibly more accurate.

Senator COOK. They had better have an exception in their league rules, because if there is a blackout, there has to be a blackout in the suite, as well as the house two blocks away from the stadium.

Senator PASTORE. Thank you very much.

Mr. RANDALL. Thank you.

Senator COOK. May I ask one other question. Just let me ask you, would you recommend any local official, city official, or county official throughout the United States that has to build a new stadium for the maintenance of a major league ball club in his community; that within the framework of the contract that is negotiated by the community, that the citizens who must assume the tax burden shall have the first right to purchase tickets and that they should be limited to four tickets, and that should be part of the contract?

Judge LEHR. Very definitely, Senator. I think—well, we should have a metropolitan tax base on something like this, but we do not. We either get the tax base or the people who are paying for the facility should, in fact, and this is what we went to court over, should, in fact, have a first come, first served basis.

Senator PASTORE. Unless you can get a team to agree with that, it will leave. The minute you impose that restriction, which is a reasonable one, the team will go someplace else.

Senator COOK. If the mayor of that community does not make that kind of an agreement, he had better have a term where he does not have to seek reelection.

Senator PASTORE. That is debatable.

Mr. RANDALL. Thank you.

Senator PASTORE. Mr. Kauper?

STATEMENT OF THOMAS E. KAUPER, ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, DEPARTMENT OF JUSTICE; ACCOMPANIED BY KEITH I. CLEARWATERS, SPECIAL ASSISTANT TO ASSISTANT ATTORNEY GENERAL

Mr. KAUPER. I am pleased to be here to present the views of the Department of Justice on S. 4010. My remarks will also deal with S. 4007. Both bills would amend Public Law 87-331, as amended, title 15, United States Code, sections 129-95.

S. 4010 would modify, and S. 4007 would terminate the home game blackout privilege permitted to professional football, baseball, basketball, and hockey leagues which enter into package television agreements.

Although the legislation which is being considered would affect all four sports, my remarks will be concentrated on professional football.

This is because professional football has a more encompassing package television contract than do the other three major team sports. Furthermore, its vast and growing popularity and its relatively limited schedule lead to a situation in which many fans in the community in which a professional team is located, find themselves unable to procure tickets to any of its home contests.

As a result, fan dissatisfaction with local television blackouts tends to be centered more on professional football than on the other three sports. Nonetheless, it will be obvious to the committee that many of my remarks have applicability to the other sports in question.

The administration supports a modification of the practice, in connection with package sales of television rights by professional sports leagues, of prohibiting the telecasting of home games in the territory of the home team.

We therefore support the proposed legislation in principle, although the Department, of course, has no expertise in assessing the impact of the legislation on total sports programming, nor on technical production difficulties which may result.

Initially, I think it would be helpful to discuss some of the legal history concerning football television broadcasting and the antitrust laws.

The Antitrust Division's initial challenge to television blackouts came in 1951, when it filed suit against the National Football League to enjoin enforcement of a league bylaw prohibiting member teams from broadcasting or telecasting their games into the home territory of another member team.

This practice was viewed as an unlawful division of market territories among competitors.

At the time, each member team contracted for the televising of its own games. The blackout of home games in the home territory was not at issue. Each team was free to sell whatever broadcasting or televising rights it desired, subject only to the strictures of the bylaw at issue, a bylaw which did not deal with the blackout of home games in the home game territory.

In a decision rendered in 1953, Judge Allen K. Grim, ruled that the league's restriction on the broadcast of "outside" games into another member's home territory on days "when the team was playing away" was unlawful.

All restrictions on radio broadcasting into another member's home territory were held unlawful. The court concluded, however, that the league restriction on televising of "outside" games into the home territory of another member team when that team was playing at home was reasonable, and not, therefore, in violation of the Sherman Act.

In reaching this conclusion, the court emphasized that less than half of the clubs of the NFL were likely to be successful over the years, that some teams were stronger than others, and that it was essential to the league concept that a balance among the teams be achieved.

Bylaws designed to achieve such balance should not be deemed unreasonable. The court concluded that since "the greatest part" of the clubs' income was derived from the home gate, reasonable protection of that gate was proper.

Television of an "outside" game into home territory where a home game was being played would, in the court's view, adversely affect attendance. It is noteworthy for present purposes that, although his decision was premised upon the necessity of maintaining balanced athletic competition within a sports league, Judge Grim specifically stated that professional football's history, on a sound business basis was so short that it was not very illuminating on the subject of what measures were reasonable and necessary to promote balanced athletic competition.

Senator PASTORE. May I interrupt you for a moment?

A question has arisen here as to schedule. Is Mr. Kirkpatrick here?

I know you are a busy man, but there is a policy luncheon for Republican members of the Senate, and Mr. Cook has to leave.

Do you want to be here? I would like to get Mr. Kirkpatrick heard.

Senator COOK. Why don't you move on, and if there are any questions, I will submit them in writing.

Senator PASTORE. All right. We will go right along until you finish your statement, Mr. Kirkpatrick.

Mr. KIRKPATRICK. Thank you.

Senator PASTORE. The next witness would be Mr. Ledbetter, and Mr. Shelburne.

Would they mind returning this afternoon?

Mr. SHELburne. I am Mr. Shelburne, and I will be glad to return.

Senator PASTORE. We have a cloture vote at 2:10, could we say 3 o'clock this afternoon?

Mr. SHELburne. All right.

Senator PASTORE. You may proceed.

I am sorry for the interruption.

Mr. Ledbetter is not here?

All right, thank you.

Mr. KAUPER. As already noted, Judge Grim's decision did not involve home game blackouts by the home team itself. Since each team contracted for the sale of its own television rights, each team was free to make its own decision on this question.

This arrangement was changed in 1960, when, for the first time, the NFL itself, entered into a network contract, granting the network the exclusive right to televise all league games, with minor exceptions.

In essence, the member clubs pooled their television rights and determined to sell those rights only in the pooled package.

In 1961, the NFL petitioned Judge Grim, seeking to determine whether its 1961 contract with CBS was in violation of the 1953 decree. The court concluded that the pooling arrangement violated section V of the decree, which enjoined the defendants from entering into any agreement with the league or any other member club "having the purpose or effect of restricting the areas within which broadcasts or telecasts of games * * * may be made * * *."

The court held that since the pooling arrangement gave CBS the power to determine which games would be televised and where they would be televised, it necessarily restricted member clubs from determining the areas in which their games would be televised.

The 1961 decision dealt with the NFL-CBS contract as a whole. It must be recognized that it did not deal with the issue of home game blackout as such.

The NFL then petitioned Congress for relief from the 1953 decree, specifically seeking antitrust exemption for its package television contract. The league contended that the American Football League was free to enter into such a contract, as were other leagues, and that the NFL should not be treated differently.

Public Law 87-331 of September 30, 1961, title 15, United States Code sections 1291-95, was the result. The statute broadly exempted from the antitrust laws any agreement among professional hockey, basketball, baseball, or football clubs whereby the league of such clubs sells all, or part of the television rights of its member clubs.

The Department of Justice opposed the legislation, and urged enactment of a provision which would reflect Judge Grim's 1953 decision that the agreement to blackout outside game telecasts when a home team was playing away was an unlawful restraint of trade. Section 2, as enacted and as appearing in the U.S. Code, embodies this limitation. It reads as follows:

Section 1291 of this title shall not apply to any joint agreement described in such section which prohibits any person to whom such rights are sold and transferred from televising any games within any area, except within the home territory of a member club of the league on a day when such club is playing at home. 12 U.S.C. 1292.

This then, is where we are today.

In this context, the impact of S. 4010 and S. 4007 would be either to modify substantially or in some cases, totally abrogate the ability of the league to prohibit the network from televising any game, including the home game, in the home territory when the member club is playing at home.

As I read the existing legislation, the inclusion of such a prohibition in a league-network contract, after passage of the proposed legislation, would be open to challenge under the antitrust laws.

In addition, as I read the proposed amendments, the presence of an agreement to blackout home games would render the entire network contract unlawful.

Under section 2 of the present legislation, the exemption conferred by section 1 is lost if a provision contrary to section 2 is included in the network agreement. If the exemption is lost, the network package agreement would then be in violation of Judge Grim's 1953 decree, as construed by him in 1961.

Finally, it must of course be noted that any amendment of Public Law 87-331, whether by S. 4010 or S. 4007, will affect home game blackouts only where such blackouts are part and parcel of the type of arrangement covered by the present statute, i.e., blackouts imposed by joint agreement among the clubs by which the league transfers television rights to the networks.

Insofar as the individual member clubs contract for the sale of their own television rights, as they did prior to 1960, amendment of the exemption statute is of no consequence.

Senator PASTORE. Would you be a little more explicit on that? Why is that a problem?

Mr. KAUFER. Obviously, at the present time, they operate under the joint agreement.

Senator PASTORE. That is right.

Mr. KAUPER. Assuming that joint agreement continues, presumably, the net effect of either of these statutes would be to significantly modify their ability to claim a privileged blackout on the game. My statement indicates that should they revert to the practice of not entering into the joint agreement, then the effect of amending this legislation has, in and of itself, no impact on the practice.

Senator PASTORE. As a legal proposition, you are right. But looking at it in a practical way, they would be biting their noses to spite their faces.

Mr. KAUPER. That may well be correct.

Senator PASTORE. I understand this completely. After all, the exemption under the antitrust law has only to do with the package agreement negotiated by the league itself on behalf of the member clubs.

Yet, of course, the member clubs individually could make any contract they want. But then, they would have to do it on their own, and that would break up the package arrangement.

I do not think they would want that anyway.

Mr. KAUPER. I think you are right.

Senator PASTORE. I just wanted to clear that point up.

Mr. KAUPER. In considering S. 4010 and S. 4007 in antitrust terms, it should be clear at the outset that neither the 1953 decision nor the 1961 decision construing the 1953 decree specifically dealt with the blackout of home games in the home team's territory.

Nor was this question the primary focus at the time Public Law 87-331 was enacted. There is no specific judicial decision dealing with the issue now before the committee.

The NFL has taken the position that the present blackout practice presents no antitrust issue. This is not self-evident to me, although the issue is clearly different from that involved in a blackout of "outside" games involving competing clubs in the home team's territory.

The NFL contends that a single member club, in selling television rights, is entitled to protect its home attendance by declining to authorize broadcasts of the same game which compete directly with the live performance. More likely than not, this assertion is correct.

But the existing blackout arrangement involves an agreement among all member clubs pursuant to the package agreement between the league and the networks, not just individual club action. The present blackout arrangement is not simply a matter of individual judgment by each member club as to when or whether a home game is telecast. It is in the collective nature of the league judgment that the antitrust issue arises.

No member team is free to implement its own decision. Neither, for that matter, is the network. As a general proposition, the antitrust laws are designed to encourage, among other things, independent business judgments with respect to what products shall be marketed, and where they shall be marketed.

It should be noted, however, that any consideration of the merits of the proposed legislation does not turn simply on the question of whether this specific blackout practice violates the antitrust laws.

The entire league-network arrangement exists, after all, because Congress determined it was in the public interest to exempt the arrangement from those laws. The exemption has undoubtedly benefitted the leagues and member clubs.

In 1961, under the exemption, the NFL's contract with CBS brought about \$332,000 to each of the NFL's fourteen teams. Today, under package contracts, the NFL has negotiated with three major networks, each of 26 teams receives approximately \$1.5 million.

Senator PASTORE. In 1961 each team got an average of \$332,000 and now it is \$1.5 million. In other words, it has gone from \$332,000 up to \$1.5 million?

Mr. KAUPER. Senator, I think the 1961 figure is the first year under the exemption. Presumably, the figure was even less, I imagine, prior to the exemption. The 1961 figure is the first year under the exemption.

Senator PASTORE. In any event, there is a distinct advantage to being under the exemption?

Mr. KAUPER. Yes.

Clearly the NFL has benefitted. But the question raised by S. 4010 and S. 4007 is simply whether the exemption which brought this about ought to be further conditioned to satisfy the public interest as it now exists.

Having received such an exemption, and thereby being allowed to engage in anticompetitive conduct not permitted in other industries, the NFL can surely be required to undertake certain activities in the public interest.

In this context, the question before this committee can be stated as follows: Is there a sufficiently strong, legitimate public interest in desire of many of our citizens to see home game telecasts which should override the interest of the league in blackouts of home games?

I think it unlikely that the proponents of continued antitrust immunity can support the burden which they must bear to outweigh public demand.

It appears to us that professional football is enjoying unprecedented popularity. Many NFL clubs, finding themselves in what have been described as "natural monopoly markets," play every season game before capacity crowds.

The story in Washington is well known. Tickets are scalped at high prices. A number of fans, unable to obtain tickets, drive considerable distances to view telecasts of the game, being carried outside the local blackout area. Altogether, there appears to be a substantial excess demand on the part of the fans to see their home games. Nor do the league nor its member clubs appear to be in the financial position described by Judge Grim, in 1953.

The NFL has made several arguments in connection with the proposed legislation which warrant attention. It has pointed out that it voluntarily abandoned the ban on telecasting of outside games into the territory of teams playing home games.

It should be noted that the American Football League had been telecasting its games into NFL Teams' home markets whether those teams were playing at home or not. In seeking legislation to permit the merger of the two leagues, the continued telecasting of these games avoided a sharp reduction in the number of games telecast to fans in 23 of our largest cities.

The NFL suggests also, that it is "unfair" to permit persons to see a game free on television while others were asked to pay to see the same game. The description of television as "free" is, of course, inaccurate.

Clearly, someone pays for the telecasts. Ultimately it is the consumer who purchases products advertised on the telecast. If the advertiser did not believe this to be the case, it is hard to imagine why he would sponsor the telecast in the first instance.

And, it is this revenue, generated from the public, which ultimately runs from the sponsor to the network, to the league, and its member clubs. Furthermore, it may also be appropriate to consider that in some of our cities, professional sports teams play in stadia built by governmental authorities, using public credit and tax revenue. To this degree, the citizen may have supported a team even when he does not buy a ticket.

The primary argument advanced by the league is based on the feared loss of revenue at the home gate. While I believe that this fear may be exaggerated, it cannot be dismissed. But it is, of course, possible that loss of revenue at the gate, if it occurs, could be compensated for by increased revenue on the sale of television rights.

In at least some local markets, a telecast of the home team may be viewed by more viewers than a telecast of an outside game, and this fact should be reflected in the price paid for television rights. The "48-hour sellout" rule contained in S. 4010 ought to resolve this difficulty. S. 4007, on the other hand, contains no such limitation.

We would suggest that this committee give careful consideration to the economic effects of a blanket withdrawal on the blackout of home games in football, and particularly in the other affected professional sports; which may not always enjoy capacity crowds.

In any event, the protection of the home gate, as such, hardly seems to be a relevant argument against S. 4010. Under either bill, the NFL could, of course, discontinue its package sale agreements if necessary to protect home attendance.

S. 4010 does present some practical difficulties. Mechanical and technical problems may arise when no decision is made on telecasting until Friday. There are likely to be recurring questions as to when a game is in fact sold out.

Conceivably a team could withhold tickets until Saturday or Sunday in an attempt to evade the statute.

Senator PASTORE. If that ever happened, they would be taking a chance on the exemption being repealed.

Mr. KAUPER. In any event, we do not believe that the fans, upon whom the teams ultimately depend for support will tolerate bad faith in the administration of the 48-hour rule.

There will be strong pressure on the teams, in marginal or ambiguous circumstances, to accede to the fans.

Thank you, Mr. Chairman.

Senator PASTORE. I want to congratulate you for your statement. It is so thorough and excellent, that I must say I have no questions.

Thank you very, very much.

Mr. KAUPER. Thank you.

Senator PASTORE. Mr. Kirkpatrick.

You are most welcome, Mr. Kirkpatrick, and thank you for coming.

STATEMENT OF HON. MILES W. KIRKPATRICK, CHAIRMAN,
FEDERAL TRADE COMMISSION

Mr. KIRKPATRICK. Thank you, Mr. Chairman.

Senator PASTORE. You may proceed.

Mr. KIRKPATRICK. Mr. Chairman and members of the committee, it is a great pleasure for me to participate today in this committee's inquiry into a question of keen concern to sports fans. As a preliminary, I would like to make it clear that time has not permitted submission of my statement to the OMB.

Moreover, although most of my fellow Commissioners have seen the statement which follows and have given their approval of it, at least in principle, it has not been formally approved by my Commission.

At the outset I wish to acknowledge my lack of expertise in the area of professional football. Further, the Commission has not conducted a study of the matters dealt with by S. 4010. However, I am sure the committee will have the benefit of the advice of many leading authorities in the sports world.

I believe, therefore, that I can best assist the committee by outlining the antitrust and public interest issues, which in my view, must be considered in evaluating the merits of this bill.

As a preliminary comment, we are not in a position to give our categorical endorsement of S. 4010 because we do not have an adequate factual basis, but I consider the purpose of the bill to be reasonable and desirable as it would seem to lead to the reduction in blackouts of telecasting football programs.

When first the courts, and later Congress in 1961, examined the impact of the antitrust laws on professional sports and faced the difficult question of deciding to what extent its merger agreements and television contracts should be exempt from these laws, it was generally accepted that football sorely needed a financial transfusion.

Professional football was then able to show that combinations or mergers of clubs and leagues which would increase the popularity of the game and generate greater gate and television revenues should be granted special dispensation under the antitrust statutes which have prohibited such agreements.

There was also support for its position that agreement for blackouts within the home territory of a league club playing at home should also be exempt from the antitrust laws.

It was argued successfully that local blackout would increase attendance at games, particularly in the case of weaker teams, by preventing potential spectators from staying home and watching the local game on television in comfort without charge.

In the 11-year period following the passage of the statute which granted antitrust exemption to agreements covering the telecasting of sports events, football game attendance has more than doubled and receipts from television have increased more than fivefold.

Improvement in professional football financial health may be due to many factors, and is not necessarily to be attributed solely to its preferential antitrust treatment. The growth and improvement in television and the spectacular popularity of color TV were also powerful contributing factors, I have no doubt.

But irrespective of the causes, football's financial condition today indicates that the time is ripe for reconsidering whether the local TV blackout—which frustrates the football fan who can neither purchase a ticket for, nor view on TV, the local game of his own team—is really in the public interest.

As has been indicated, the FTC is not in a position to judge whether the partial lifting of the statutory TV blackout of local games as contemplated by S. 4010 would jeopardize the continued prosperity of this sport.

I am of the opinion, however, that any interest which enjoys an antitrust exemption must continue to meet the burden of justifying the exceptional treatment. Based on this premise, should the committee determine at the conclusion of these hearings that the representatives of the professional sports concerned have not clearly justified their need for the continued imposition of local blackouts on all home football games, the enactment of S. 4010 would appear clearly in the public interest.

Before closing, however, I would like to point out that the proposed legislation may pose considerable enforcement problems. The exception to permissible homegame blackouts applies "when tickets for admission are no longer available for purchase by the general public 48 hours before the scheduled beginning of such game."

I have great difficulty in envisioning the manner in which such language will be applied. I assume that when scalpers still have tickets available for purchase, such tickets are for the purpose of this legislation "no longer available for purchase by the general public."

However, that result is not altogether clear.

Senator PASTORE. Let me clear it up now. Once the ticket is bought from the management, that ticket is sold. I don't think we would have any trouble with that at all.

Mr. KIRKPATRICK. That would be the literal language.

Senator PASTORE. Once the ticket is purchased, I don't care who buys it, it is purchased. If he wants to resell it, that is his responsibility, but as far as I am concerned, that seat is sold.

Mr. KIRKPATRICK. That is what this language would bring about, in my judgment, sir.

Senator PASTORE. That isn't too tough, either.

If I ever went there on the 48th hour to buy the ticket and they wouldn't sell it to me, and the ticket was available tomorrow, I would know they were playing a kind of game. In that event, they would be taking the chance that the whole exemption would be repealed. After all, it would be a slap at the Congress.

Mr. KIRKPATRICK. As I understand it, I am told that some teams now in good faith, in order to keep the sale of tickets at the gates to the general public—

Senator PASTORE. I think these are honorable people.

I think this will not be a problem. Of course, football in 1961 isn't professional football today. Things have changed. They have become very, very popular, and understandably so.

As I have said many times, I am not here to punish anyone. I think it is a great thing. After all, many, many people watch these games.

Sometimes the family is in a state of consternation if daddy wants to look at the football game and mommy wants to look at something else. But, that is a family affair.

These are honorable people. I don't think they are going to zigzag this in such a way that they are going to hold up a block of tickets.

Mr. KIRKPATRICK. Now, some teams do withhold for sale at the gate only, on the day of the game.

Senator PASTORE. They should not do that.

Mr. KIRKPATRICK. I don't know what purpose they do it for. It is done in good faith.

Senator PASTORE. It raises problems, but the management pretty well knows whether the tickets are sold 48 hours before the game time. And when the President of the United States calls for an emergency news conference in the morning, the networks can make all the arrangements. And it is not much harder to do in this particular case, because the television hookup is already there. All they have to do is permit the line into the local stations.

There is no difficulty there. There is no technical problem, really.

They might have to do a little bit of crash work to get it on in time, but that is no difficulty.

I think in the long run—you see, I have said this before, Mr. Kirkpatrick, they kind of undersell their own product. They say that if they have to show it locally even though it is sold out, it is going to hurt us next time; and that people will hold off buying tickets because they want to see what kind of weather it is going to be. Well, I think what they are doing, is underselling the excitement and the enthusiasm of the game, of being there.

Everybody likes to buy a ticket to go and see the World Series. The trouble is that you can't get a ticket for love nor money.

The idea that fans would rather see it on television than go and see the game, is not the way I understand the loyalty of the fans in this country.

I see it in my own neighborhood. They have all kinds of bumper stickers. There is a great amount of elation if the Redskins win, and when they lose, the community is sad for 24 hours. You can't buy that kind of loyalty.

I tell you very frankly, maybe the loyal fans are really the ones that can't buy the tickets. Maybe it is some industrialist who comes along and buys a season ticket just to accommodate his customers. Those are the fellows who are buying the season tickets, by and large. And, in many instances, they are sold before the season starts.

But I don't want to get into that. If a game is not sold out the blackout will come into play, you see.

The Attorney General, who represents the antitrust division, took the other tack. He was wondering whether there ought not to be a blanket withdrawal of the blackout of home games. The Griffin bill would do that.

I thought that went a little too far. That bill would ban the blackout of home games no matter what.

Well, that could do an economic injustice to the clubs. In the long run, it might eliminate the games on television under all circumstances whether the game was out of town or in town.

So, I thought the only reasonable way to resolve this was to take it game for game. Then the question came up: "Would you say 24 hours, or 48 hours?"

Forty-eight hours before game time was chosen in order to allow all these other elements to come into play such as the technical machinery, and so forth, necessary to show the game. That is the reason we picked out 48 hours.

Now, if the leagues come here and say it should be 64 hours, or 60 hours, we can get together on that. I don't think we are going to have any problem there.

But, you know, this didn't come out of thin air. This has been a problem that has been going for some time. An article in the Fairfax paper, and I am going to ask unanimous consent that this be placed in the record, has several statements from people who were queried on the problem.

(The article referred to follows:)

[From the Fairfax County Journal Standard, Sept. 28, 1972]

'SKINS FANS CHEER BILL TO BAN TV BLACKOUTS

(Journal Staff Report)

Northern Virginia football fans this week emphatically endorsed the efforts of Sen. John Pastore (D-R.I.) to outlaw television blackouts of soldout professional grid games.

Even Washington Redskin season ticket holders called the blackout concept unfair to less fortunate fans who can't buy, beg or steal their way into sold-out RFK stadium for Redskin games.

Hearings on Pastore's bill (S-4010) are scheduled to begin on Oct. 3 at 10 a.m. in Room S110 in the New Senate Office building.

"Banning the TV blackouts is a great idea," commented Lee District Supervisor Joe Alexander, "especially in the Washington area. I am a season ticket-holder but it wouldn't bother me at all if the home games are shown on TV. I prefer to go to the stadium anyway."

Another season ticket holder, Paul Stamer of Arlington, echoed Alexander's view. "I feel that more people who enjoy football should get a chance to see the games," he declared. "I see no reason at all to black out TV as long as the stadium is filled . . . And I'm sure that the season ticket holders will continue to buy tickets and go to all the games, regardless of whether or not the games are on home television."

Alexandria City Councilman James Carroll, also a ticket holder, said he "thinks it is incumbent on the owners to allow games to appear on television if they are sold out."

Carroll noted that he has three other rabid Redskin fans in his family but since more tickets aren't available and the home games aren't on TV, they miss out completely."

Fairfax County School Board President William-Wrench supports the anti-blackout proposal, adding that he doesn't think the Redskins management has been playing fair with "the little guy."

"Certainly if the stadium was only half filled," declared Wrench, there would be a reason for the blackouts. If pro team owners are going to enjoy protection from anti-trust laws, I think the public has a right to expect management to operate in a more responsible manner."

Capt. Dan Pollock of Potomac Hills in McLean said bluntly: "I'm against the blackouts. Sure, the owners should be allowed to fill the stadium, but once the place is sold out why the heck can't they put the games on TV."

Fans in northern Virginia are especially incensed by the Redskin management's action in forcing a Baltimore television station to cancel its already-announced plan to broadcast several Redskin home games (which like all other games in recent years, have been sold out).

Robert Salem, president of the Fairfax County Chamber of Commerce, strongly protested this action in a letter to Edward Bennett Williams, president of the Redskins. Salem said area citizens are enthusiastic fans and shouldn't be denied the right to see home games on TV—if the games are sold out.

Salem added that should ticket sales ever become a problem for the Redskins, the chamber would be delighted to help out with promotion efforts.

Redskin officials have maintained for years that the TV blackout policy is vital to protect the hardy season ticket holder who puts down his money before any games are played without knowing if (1) the team will be worth watching, (2) the weather will be good and (3) the games will be on TV.

In New York, National Football League spokesmen asserted that past experience shows when home games are televised over a period of time, attendance drops dramatically.

However, comments of longtime ticket holders appears to cast doubt as to the likelihood of this happening in Washington.

As Ray Morgan of Mt. Vernon put it: "The fact that I have Redskin tickets doesn't alter my view at all. I am definitely in favor of ending home game TV blackouts. Anytime I have a chance to see a game at the stadium I will go out there, even if the game is on TV. And I'm sure other ticket holders feel the same way."

Senator PASTORE. They took the position that they were season holders, but they thought people who couldn't buy a ticket, should see the game.

Imagine the poor fellow who stands in line and when he gets to the gate, they slam down the window.

I had a friend who wanted to see the game on November 26, between the Redskins and the Green Bay Packers. They literally laughed in his face. He couldn't buy a ticket for love nor money.

That is a game to be played November 26. They certainly are taking no chances.

As a matter of fact, lifting the blackout when the game is sold out would generate so much enthusiasm on the part of the public. I think it would work the other way. I think the leagues ought to take the position that this would be helpful rather than be damaging, and if it is damaging, of course, they would have the blackout.

You realize what it means to the clubs to be able to sell the television rights to the networks as a package. It now means \$1.5 million to each club.

And television has made that possible, and the taxpayers of this country have made television possible. A lot of money has gone into this. What are we talking about? Is it in the public interest to continue this blackout when the game is completely sold out? And that is the question.

I say no. If you are going to use the public airways, and if you have been given the right to sell the television rights in a package by virtue of the exemption of the antitrust laws, I think the public should not suffer in return.

I want to thank you very much.

I want to thank everyone for coming.

We will recess until 3 o'clock.

AFTERNOON SESSION

Senator PASTORE. I am sorry to be doing this to you, Mr. Shelburne, but these are hard days around here.

Mr. SHELburne. That is all right, Senator.

Senator PASTORE. You have a written statement. You may proceed, sir.

STATEMENT OF THOMAS P. SHELBURNE, VICE PRESIDENT OF
TAFT BROADCASTING CO. AND GENERAL MANAGER OF WNEP-
TV, SCRANTON, PA.; ACCOMPANIED BY VICTOR E. FERRALL, JR.,
COUNSEL

Mr. SHELBURNE. This statement was dictated yesterday at a time when I did not know that I was going to be requested to come here, so some of the wording may be a little different than it would be had I known I was going to be here in the first place.

Senator PASTORE. Don't worry about it.

Mr. SHELBURNE. I have just experienced a blackout last night in our area.

Senator PASTORE. When you say "our area," where is that?

Mr. SHELBURNE. The Scranton area. The Eagles-Giant game was played; we are on an ABC station, and we were blacked out last night, so I have some fresh impressions for you, which I can give you after I read the statement.

Senator PASTORE. All right, sir.

Mr. SHELBURNE. I am Thomas P. Shelburne. I am vice president and general manager of Taft Broadcasting Co.'s Scranton, Pa. television station, WNEP-TV.

The people who live in the Scranton area, as well as WNEP-TV, are unfairly and adversely affected by present National Football League television blackout policies. For that reason, I appreciate the opportunity to present this statement to you.

WNEP-TV is an ABC Television Network Affiliate. It carries the NFL's Monday night football games. The television audiences for those prime time games are, as you know, very large. The consequences to the station and the viewers it serves are very severe when television coverage of games is blacked out.

Scranton is in the NFL's television blackout area for the Philadelphia Eagles. WNEP-TV is prohibited by the NFL from broadcasting Eagles home games.

The Scranton area, as I am sure you know, has one of the heaviest cable, or CATV, penetrations in the country. Based on the best figures available, somewhere between one-third and one-half of all television homes in our service area are connected to a CATV system.

I know of no CATV system in our area which does not have available to it at least one of the ABC Affiliates in New York City, Binghamton, N. Y., Harrisburg, Pa., or Baltimore, Md. Philadelphia Eagles home games are not blacked out by the NFL on any of those four ABC Television Network Affiliates.

This means that whenever the Philadelphia Eagles play at home on Monday night, cable subscribers in the Scranton area receive the game—but no one else does.

This is particularly important in the case of Philadelphia Eagles-New York Giants games. A traditional and exciting rivalry exists between these two teams. For this reason, apparently, Eagles-Giants games regularly find their way to Monday night on ABC even when those two teams have little chance of winning their Division.

When an Eagles-Giants game is played on Monday night in Philadelphia, television coverage in Scranton is blacked out by the NFL. But it is not blacked out in Baltimore, Harrisburg, New York City or Binghamton.

Senator PASTORE. Let me ask you, how far is Scranton from Philadelphia?

Mr. SHELburnE. If you will turn the page, Senator, we have a chart there. I am leading up to that.

Senator PASTORE. Fine.

Mr. SHELburnE. I am not a lawyer, but it is my understanding that under the football exemption to the antitrust laws, local high school and college football games receive protection only with respect to television stations located 75 miles or less from the place where the game is played.

NFL professional football teams, on the other hand, can blackout football games throughout the "home territory" of any team. The NFL—not Congress—decides what the home territory of a team is.

I do not understand why protection for collegiate sports is limited by law to 75 miles, but professional football protection is limited only by the NFL's own arbitrary action.

In the case of residents of the Scranton area, the NFL has been arbitrary. Let me show you a simple table which I have prepared which gives the road miles and air miles between Philadelphia and three cities in which ABC Television Affiliates are located—Baltimore, Md., Harrisburg, Pa., and Scranton, Pa.

The chart shows that the road mileage from Baltimore to Philadelphia is 97 miles, from Harrisburg is 105 miles, and from Scranton is 122 miles.

When you measure this in air miles, the distance from Baltimore to Philadelphia is 90, from Harrisburg to Philadelphia is 93, and from Scranton to Philadelphia is 103.

The only city on my table which is blacked out for Philadelphia Eagles games is Scranton. I do not understand what public interest justification can be given for this discrimination.

I would like to interpose here for a brief moment. The approximate distances from Scranton to New York City and from Scranton to Philadelphia are pretty close to the same by road and by air. I think there are about 6 more miles by road to New York from Scranton than to Philadelphia.

You would think that similar blackout problems might be imminent from that direction, if you used this type of logic.

As I mentioned before, all of the approximately 130 CATV systems in WNEP-TV's service area are able to get Philadelphia Eagles home games because all of them can obtain one or more ABC Television Network Affiliates from some city other than Scranton which is not blacked out by the NFL.

This means, of course, that the 35 to 50 percent of the residents of the WNEP-TV service area who want and can afford CATV can watch Philadelphia Eagles home games. But the Scranton area residents who cannot afford or do not want to subscribe to CATV cannot see the games.

I think it is worth noting that the Scranton residents who could not afford to pay \$6 to \$8 for a Philadelphia Eagles game ticket even if one were available are presumably the same Scranton residents who cannot afford to pay \$6 to \$8 monthly service charge for CATV.

Of course, the number of people who travel the 122 miles from Scranton to Philadelphia to see an Eagles game is limited in any case. I

checked before writing this statement and learned that only one special bus, carrying 47 people, will be going from Scranton to the Eagles-Giants game tonight—that is last night—a game which is blacked out on television and also sold out at the gate.

The unfairness of the NFL's blacking out WNEP-TV is as I have indicated, compounded by CATV. We at our station feel particularly strongly about this because it is our own programing, taken off the air without charge by CATV systems, which is the programing staple that permits those systems to survive. When a particular game is shown in our service area by CATV's but not by us, it is in a very real sense pay-TV and we are the ones that are paying.

The unfairness of the blackout to WNEP-TV is further compounded when the Monday night game of the week is a Philadelphia Eagles home game and occurs during a television rating period.

That happened in 1970 when the Eagles played the Giants on November 23, right in the middle of both ARB and Neilson ratings in our market. Needless to say, the programing which we had to use to fill the blacked out time did not achieve as high a rating as the football game which we were prohibited from carrying. As a result, our ratings for the entire rating period—on which we must rely to sell advertising for many months—were distorted downward.

The NFL has distributed a statement which claims that they have voluntarily adopted a policy of not blacking out any area, but rather of offering on television games other than that of the "home territory" team playing at home. This may be true on Sunday afternoons. But it is certainly not true, and the NFL I think has violated its own policy, on Monday nights.

I have given a number of reasons why the application of the football television blackout antitrust exemption has been applied by the NFL in a way unfair and harmful to the people of the Scranton area and to WNEP-TV.

But the basic point, I think, is there is no justification for any antitrust exemption which permits such capricious, arbitrary, and uncontrolled discrimination, one, against a station 122 miles away from a football game, two, as between various cities such as Baltimore and Scranton, and three, as between CATV subscribers and non-CATV subscribers.

If the NFL is to be given monopoly status, unregulated by the marketplace, it seems to me that it is the responsibility of the Congress which gave that monopoly to see that it is not abused and that proper rules are established.

I would like to note that I have been addressing myself only to Monday night NFL football on ABC. I have no personal knowledge of the other two television networks. I note, however, that Sunday afternoon Eagles home games which are carried on the CBS Television Network are not blacked out in Scranton. I confess that this seems to me yet another act of arbitrary discrimination on the part of the NFL.

My staff people told me that this morning WNEP-TV has received a number of telephone calls from area residents attacking us for not carrying the Eagles-Giants game last night and accusing us of discriminating against flood victims. I agree with them. I only wish they knew where the responsibility lies.

To summarize, sir, we would like to make three suggestions. One, in your proposal as to 48 hours prior, if the game is sold out, it seems to us if such a rule would be adopted it could easily apply when the game was sold out.

For example, in the case here, the game was sold out on June 1, I understand, and therefore it may not be necessary to wait until just 48 hours.

Secondly, we would like to suggest that blackouts, if there are blackouts, whether or not the game is sold out, should apply to the media on a fair basis. If a broadcast is blacked out, CATV should likewise be blacked out in a particular market.

Thirdly, we think that the distance, if there is a distance rule, should be uniform and that it should be applied by Congress.

Thank you.

Senator PASTORE. What surprises me is that you say that the NFL in the contract with CBS does not black out Scranton on the Sunday game.

Mr. SHELburnE. This is actually the case, Senator. Last year, and we have the TV Guide issues and we have checked with the stations, there were two Sunday afternoon games on CBS, and they were both carried by the local CBS affiliate in the market.

I don't know why.

Senator PASTORE. You mean they have a different contract with CBS than they have with ABC?

Mr. SHELburnE. I do not know.

Senator PASTORE. It could be?

Mr. SHELburnE. It could be, possibly.

Senator PASTORE. We will get into that.

Your suggestion would be, in other words, that this should be modified so that any time a game is sold out at least 48 hours before game-time the blackout should be lifted.

Mr. SHELburnE. Yes.

Senator PASTORE. In other words, if you knew in June all the tickets were sold out for a game taking place, let's say, on October 8, they would have all that time to know that that game will be shown and there will be no blackout and technical difficulties would be less.

Mr. SHELburnE. We see no reason to wait for 48 hours in a case like that.

Senator PASTORE. What was the surprise you were going to give us after your written statement was over?

Mr. SHELburnE. Did I say a "surprise"? I am sorry.

I had forgotten. Well, I came down here last night, and when I came down, I knew that unless something happened at the last minute that we would be blacked out, and we were blacked out.

I called this morning, called my office to find out what happened. The answer was that the switchboard was busy the whole time. The girl that we had asked to come back and man the switchboard because we knew the calls would be coming in had to leave because she had a headache, and the statement that she gave me was that the abuse was awfully hard to take.

In other words, there were a great many people that were very unhappy and unfortunately they blame the station for it.

Senator PASTORE. In that case, would it be difficult to have one of your people go on television and say this is no fault of the station?

Mr. SHELburnE. We did that, sir. Several times. We knew we needed to do that, and we did it as often as we could. But even so, evidently it doesn't reach everybody.

Senator PASTORE. The point you make is this: The home games in Philadelphia can be shown in Baltimore, and in Harrisburg, which are closer to the stadium than Scranton. But it can't be shown in Scranton.

Mr. SHELburnE. Yes, sir.

This doesn't seem to us to be fair.

Senator PASTORE. It doesn't seem to be fair to me either, and we are going to find out why.

Senator BEALL. Could I ask one question?

I am a little confused about the statement about the CBS affiliate. Is this affiliate in Scranton and they carry the Sunday games?

Mr. SHELburnE. Yes, last year they carried two of them. They carried two last season.

Senator BEALL. Who tells you, you can't carry the ABC Monday night game?

Mr. SHELburnE. We're advised as to whether or not we can carry them by the network. The network tells us they have to give us these orders because of their agreement with the NFL.

Senator BEALL. Would their agreement with the NFL be different than CBS's agreement with NFL?

Senator PASTORE. Yes.

Senator BEALL. It is.

Senator PASTORE. That is the point he is making.

Mr. SHELburnE. I am not familiar with the CBS agreement.

Senator PASTORE. Well, it isn't a question that you don't put it on because they tell you not to put it on. It doesn't come through to you, does it?

Does it come through to you?

Mr. SHELburnE. It does not come through to us, because of the fact that we are served by a microwave link, A.T. & T. network.

Senator PASTORE. Which is controlled by whom?

Mr. SHELburnE. It is controlled by ABC, and ABC asks that this be cut off, and therefore it is not available to us.

Senator PASTORE. It isn't a case of your being told not to show it. You couldn't have shown it if you wanted to; isn't that the point?

Mr. SHELburnE. Yes, sir.

Senator PASTORE. I want to get that clear. It just isn't being channeled out to you.

Mr. SHELburnE. That is correct.

Senator PASTORE. Do you have further questions?

Senator BEALL. No. These contracts make interesting reading, Mr. Chairman. I know, as an aside, that Salisbury, Md. is almost equally distant from Baltimore and Washington and it is blacked out for Baltimore games and not blacked out for Washington games. I just don't understand this. This makes no sense whatsoever, because you have two towns almost equally distant from the teams.

Senator PASTORE. When we get Mr. Rozelle here tomorrow we will ask him. There must be some reason why they do this. They may feel it hurts patronage from Scranton. But how can it be a case of patronage from Scranton. Only 47 people, I think you said, went to Philadelphia to see the Eagles last Monday night.

Mr. SHELBURNE. That is the answer we received from our inquiries. Senator PASTORE. So it isn't a question of patronage.

Mr. SHELBURNE. I have lived in the general area for 20 years and I don't feel that we are hometown Philadelphia at all. I feel we are just as much hometown New York as we are Philadelphia. We actually travel to New York more often.

Senator PASTORE. Apparently there must be a lot of interest in the game in Scranton because you get these calls.

Mr. SHELBURNE. Yes, there is. The Eagles-Giant game is always very popular.

Senator PASTORE. ABC doesn't have a choice of games. That is the only game they supply on Monday night.

Are there further questions?

Senator BEALL. It is interesting to note in the NBC contract, if Baltimore had remained in the National Football League, the old division, and had been broadcast by CBS, presumably they could have been carried over Hagerstown, Md., but when they transferred to AFL, Hagerstown is blacked out by NBC. So apparently the transfer from one league to the other made the difference in this instance whether that television station in that town could carry the game, which is even more unusual.

Senator PASTORE. Well, that is something that we ought to look into. It is rather strange. Unless the contracts were made at different times.

Senator BEALL. Presumably they were.

Senator PASTORE. And under different conditions. But now I understand that they negotiate for both leagues.

Senator BEALL. That is my understanding.

Senator PASTORE. And whether or not, of course, this is something that took place before then, I don't know. But I think we ought to find out when they come here.

There doesn't seem to be any point in blacking out the Scranton station. I don't think they are losing that patronage, but there you are. If it comes through CBS, it is shown. If it comes through ABC, it is not shown. And you wonder why. But the point that Mr. Shelburne makes is that all of this is possible because of the exemption that we granted.

His argument is that after all, if the public interest is involved, those who gave the exemption to protect the public should make proper provisions to see that the exemption is used in the public interest.

Is that the point you are making?

Mr. SHELBURNE. Exactly.

Senator BEALL. I was laboring under the erroneous impression that 75 miles was the magic figure, but I gather that that is not the case. It is now purely an arbitrary decision.

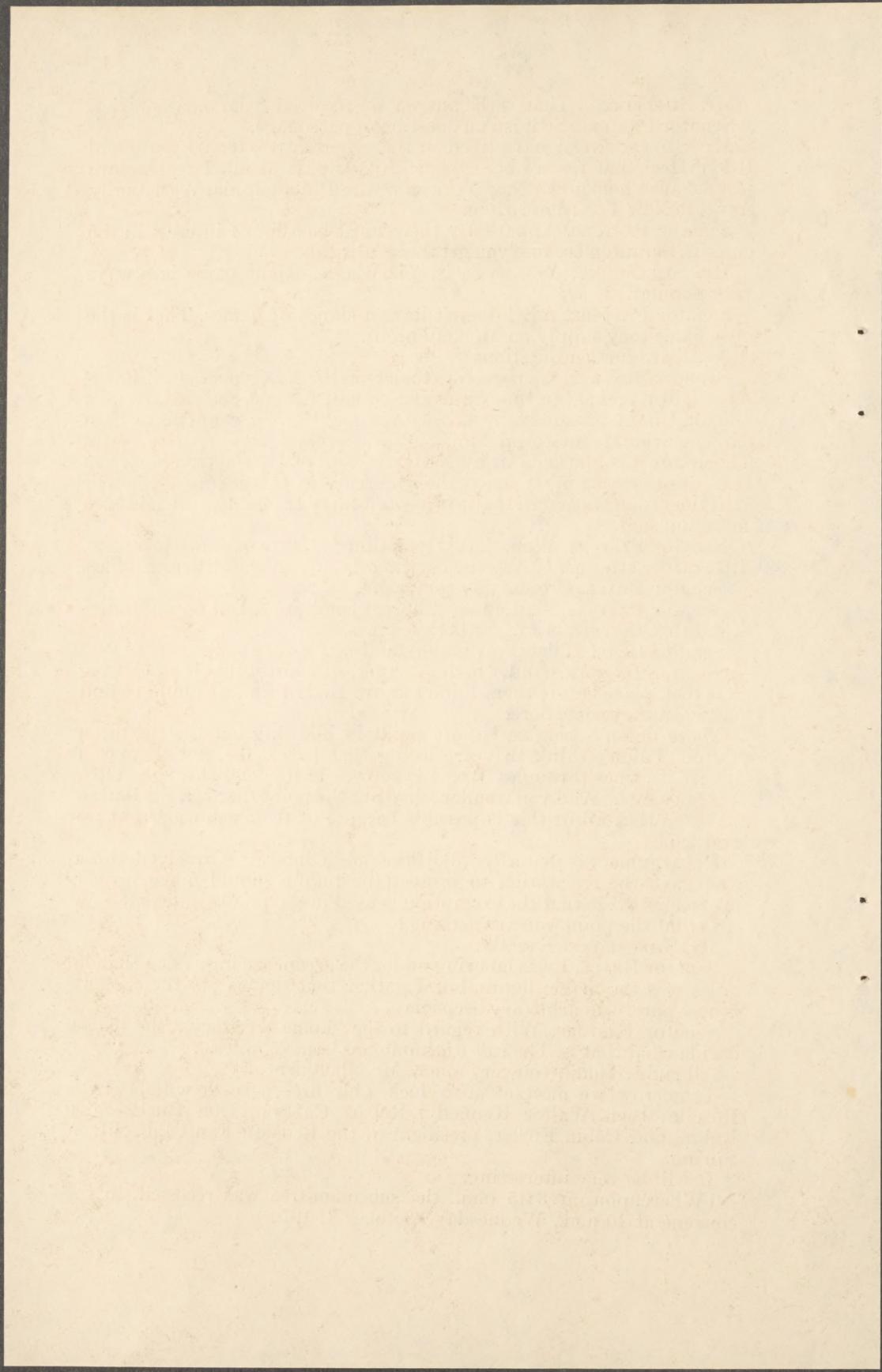
Senator PASTORE. With regard to the "home territory," the teams decide what that is. The rule of thumb has been 75 miles.

All right. Thank you very much, Mr. Shelburne.

Tomorrow we meet at 10 o'clock. Our first witness will be Pete Rozelle; then Walter Kennedy, Robert Carlson, Don Ruck, Ellis Rubin, and Robin Ficker, president of the Redskin Fan Club, Silver Spring.

It will be very interesting.

(Whereupon, at 3:45 p.m., the subcommittee was recessed, to reconvene at 10 a.m., Wednesday, October 4, 1972.)



BLACKOUT OF SPORTING EVENTS ON TV

WEDNESDAY, OCTOBER 4, 1972

U.S. SENATE,
COMMITTEE ON COMMERCE,
COMMUNICATIONS SUBCOMMITTEE,
Washington, D.C.

The subcommittee met at 10 a.m., in room 5110, New Senate Office Building, Hon. John O. Pastore (chairman of the subcommittee) presiding.

Present: Senators Magnuson, Pastore, Hartke, Hart, Moss, Hollings, Inouye, Cotton, Baker, and Beall.

Senator PASTORE. The hour of 10 o'clock having been reached, we will resume this hearing. This morning, we are privileged to have as our first witness Commissioner Rozelle. If he would oblige us by coming forward and taking a seat at the witness table together with any of his colleagues we would appreciate it very much.

Commissioner, would you kindly identify your colleagues so that the record will indicate who they are?

STATEMENT OF PETE ROZELLE, COMMISSIONER OF THE NATIONAL FOOTBALL LEAGUE; ACCOMPANIED BY GERALD PHIPPS, CHAIRMAN OF THE BOARD, DENVER BRONCOS; ARTHUR ROONEY, SR., PRESIDENT, PITTSBURGH STEELERS; JIM FINKS, VICE PRESIDENT, MINNESOTA VIKINGS; AND HAMILTON CAROTHERS, COUNSEL

Mr. ROZELLE. Fine, Mr. Chairman.

My name is Pete Rozelle. I am commissioner of the NFL. I am appearing here today to oppose the enactment of Senate bill 4010 or any of the other pending Senate bills having the same or a similar purpose.

I have with me Art Rooney, president of the Pittsburgh Steelers, Gerald Phipps, chairman of the Denver Broncos, and Jim Finks, vice president and general manager of the Minnesota Vikings. Also present today is the league's counsel, Hamilton Carothers.

I want to assure you that the comments I am about to make are not simply my own views on this situation. My comments have the unqualified support of each of the 26 member clubs of the NFL.

I think I understand how a congressional proposal of this character originates. It has the appearance of offering something to the American public free of charge. And viewed in its most superficial light, it has the appearance of being a proposal which can offer this public benefit without doing damage to anybody.

But these premises are, as we see it, quite in error. Indeed, almost every congressional statement I have read to date on this subject proceeds on the basis of some very fundamental misunderstandings as to substantially every phase of the matter.

Perhaps the best way for me to begin would be to list some of the statements put forward in support of this proposal and make a brief comment about each.

We hear, for example, this proposal continually referred to as a "blackout" issue. The fact is that it is not a blackout issue at all. NFL home territories are no longer blacked out on television on Sunday afternoons even when the home team is playing a game at home; two or three NFL games are telecast in each home territory each Sunday afternoon.

This proposal therefore does not deal with blackouts—it is an effort to prescribe by statute which NFL game must be telecast in what area on what occasions.

To say the least, this strikes me as a rather unprecedented proposal. I am not aware that Congress has proposed this for any other form of public entertainment.

We also read statements to the effect that this proposal resolves a significant antitrust issue. The fact is that the member club's practice of not telecasting locally the same games being played locally has never presented any antitrust issues—any more than a similar decision by the Kennedy Center, the Barnum & Bailey Circus, or the promoters of a boxing match would.

We read that this practice by the member clubs was successfully defended in an antitrust case during the 1950's but that conditions have now changed, and the basis for the court's decision can no longer be justified. But the fact is that this particular member club practice has never been the subject of litigation and was not even questioned by the Antitrust Division at that time—which is precisely what, I am informed, the Assistant Attorney General in charge of the Antitrust Division said yesterday.

Senator PASTORE. Now you are speaking of the time when each member club acted on its own in selling its television rights for the game as against the league operating on behalf of the full composition of the league.

Mr. ROZELLE. That is correct.

Senator PASTORE. Which, of course, is the big difference made possible by the exemption under the antitrust law. Am I right, Mr. Rozelle?

Mr. ROZELLE. Would you repeat that, please, Mr. Chairman, the last part, where you asked me the question?

Senator PASTORE. Which, of course, is the very reason why the exemption from the antitrust law was sought by the league.

Mr. ROZELLE. To have the member clubs act as a package.

Senator PASTORE. And that is where the benefit lies.

Mr. ROZELLE. Yes, sir.

Senator PASTORE. You could make a better deal with the networks than if each club would have to do it separately. That concession was made by the Congress.

Mr. ROZELLE. That is correct. There are a number of reasons for it. A number of our clubs were in a position where they were going to lose their individual contracts with the networks.

Senator PASTORE. But the point I am making is that I quite agree with you that if each member club acted in its own behalf individually, you would have no antitrust issue at all. I think the attorney would agree with me on that, and that is what the Attorney General said yesterday.

But since 1961, when we granted the exemption, the member clubs can join together and make one single package deal with a network for all games.

Mr. ROZELLE. That is correct.

Senator PASTORE. So when you talk about the Kennedy Center or Barnum & Bailey Circus, we are not talking about the same thing. We are not talking about a package deal when it comes to Barnum & Bailey. We are not talking about a package deal when it comes to Kennedy Center, because they don't have an exemption in anyway, and they don't need an exemption under the antitrust laws.

I am just clearing up that point, Mr. Rozelle.

Mr. ROZELLE. Your point is correct, Mr. Chairman, in that we were given the right to sell the television rights of the member clubs in a package. I am merely saying that the right to black out under any circumstances has not heretofore been an antitrust issue.

Further, the individual clubs are the ones who determine whether there will be a blackout of their game played locally. As it is spelled out in our constitution and bylaws, the two teams participating in a game have the right to determine whether that game will be televised in the city where it is played.

Senator PASTORE. In other words, you are saying now that this matter of home territory is not part of the contract with the networks?

Are you saying that?

Mr. ROZELLE. I am saying that the home territory is involved in our television contracts. However, the basis for the markets to be blacked out through those television contracts is determined by consultation with the clubs.

Senator PASTORE. Oh, I realize that.

Mr. ROZELLE. They are the ones that make the decisions.

Senator PASTORE. But it is promulgated by the negotiator when he negotiates with the network.

Mr. ROZELLE. On the basis of what the individual clubs tell him they wish to have blacked out.

Senator PASTORE. If I may continue, Mr. Rozelle, we want to make our position clear, and we want to do it in a friendly manner. I want to make it clear that the American public enjoys seeing these games, and we are not going to do anything to disturb that.

Television has been a great boon for the league and a great boon for the viewers. There is no question at all about that. We have millions and millions of people throughout the country who are sports fans who turn on the television. They can see the games they would like to see. You make that possible, and we compliment you for that.

No one is here to criticize you. But the point has been raised by the fans and the public.

You would be surprised the letters that Senators have received. Both of the Senators from that State of Minnesota, for example, are cosponsors of this bill.

The only reason why they are cosponsors of the bill is not for the glory of being on the bill as a cosponsor. They did this because of complaints from back home. All we are saying is that when you have a complete sellout and there is no question at all about your gate being damaged in any way, then why shouldn't you satisfy all those fans who would like to see it, who would like to buy a ticket but can't?

I think your argument is that you are going to be hurt, and we want to hear that. We want to hear that, because we don't want to do the wrong thing.

But we want an understanding that you are not here as a hostile witness. You are welcome here. You have been invited to come here. You have not been subpoenaed here. We love to have you here. We love to hear you talk about football because we all like football, maybe not as much as you do—

Senator COTTON. And we would all like their autograph before they leave.

Senator PASTORE. So feel free, you are among friends.

Mr. ROZELLE. I feel calm.

Mr. Chairman, I would like to interject that I appreciate the opportunity for this hearing. We were concerned we would not have this opportunity. I would express my appreciation for the 26 member clubs to you for taking time to hear us.

The CHAIRMAN. A technical question: There is a home team and its opponent involved. Does the home team make the decision as to the television, the blackout, or do the two teams together?

Mr. ROZELLE. Insofar as the television station in that city is concerned, whether that television station will air the game or not, both competing teams will have to agree, the home team and the visiting team.

The CHAIRMAN. Supposing the home team wants the blackout and the visiting team says no? Then what happens?

Mr. ROZELLE. They would have to mutually agree.

The CHAIRMAN. And unless they mutually agree, it does not take place, is that right?

Mr. ROZELLE. That is correct.

The CHAIRMAN. Have you ever had an occasion where the visiting team did not agree then with the home team's decision? I doubt if you would.

Mr. ROZELLE. No, I don't recall one. The visiting team has that right, because otherwise, it was felt when this was put in, they might televise and get money from it, and the gate receipts suffer.

The CHAIRMAN. The reason the visiting team would agree with the home team is that next week they might be the home team. Isn't that about what goes on?

Mr. ROZELLE. I think it was originally put in because it was felt that the home team might televise and the visiting team would suffer at the gate, it would affect the 40-percent share of the gate receipts.

The CHAIRMAN. But there has to be an agreement between the two?

Mr. ROZELLE. Yes.

The CHAIRMAN. All right, thank you.

Mr. ROZELLE. We have read statements to the effect that the source of the league's present practice is an antitrust immunity granted to

the league by an Act of Congress in 1961—when the fact is that the practice of not televising local games locally has never required any antitrust immunity and Congress never intended to deal with it in 1961.

So I think you must agree with me that there are some very fundamental misunderstandings about the legal context of this proposal.

Even more importantly, we think the supporters of this bill are operating with some equally significant misconceptions as to the predictable effects of this bill and as to the circumstances existing in this particular form of entertainment, which is what professional football is.

We read, for example, that all NFL games are regularly sold out, and that it is no longer feasible for the members of the public to obtain tickets to NFL games—when this is simply not so. The fact then is that there are only a limited number of NFL cities where this is the case.

In most NFL cities tickets for NFL games are available to the public up to the time of kickoff.

We also hear the statement that the practice of not televising local games locally unfairly deprives home territory fans of their proper share of NFL game telecasts—when the average NFL home territory receives 74 free NFL game telecasts each season, the league and many outsiders are already concerned with the problem of oversaturation and too much television, and the proposal is simply to add additional game telecasts to this tremendous schedule.

We are told that a justification for this proposal can be found in the fact that many NFL clubs play their games in municipally owned stadiums—when municipal stadium authority interests would, we are clear, be as much damaged by this bill as would the NFL member clubs themselves.

Substantially every NFL stadium lease is based on percentage of gate receipts and many stadium authorities have a direct financial interest in all or a portion of the parking fees and concessions.

We are told that the enactment of this bill would not in any way affect ticket sales by the member clubs—when there is not a single member club of the league that believes this and all of the league's experience argues to the contrary.

If you are inclined to dispute this, just remember that what you are proposing here is a statutory guarantee to every member of the American public that he will be able to see one, two, three or all seven home games of his choice either on television in the comfort of his home or by appearing at the team's local ticket office at any time before 1 p.m. on the Friday preceding the game.

This proposal could create some of the strangest Friday morning ticket lines in the history of public entertainment—with everyone jockeying to remain at the end of the line.

Senator PASTORE. Do you really believe that, Pete?

You don't really believe that.

Mr. ROZELLE. I certainly do. Do you understand my point? It is a sellout, and he does not have to buy a ticket, and he can watch it at home on television.

Senator PASTORE. I think you undersell your own product. I think the excitement of being there, nothing compares with it. We have a statement here from one of the local papers, the Fairfax Journal Standard, and three fellows who have season tickets, and they say rain or shine they are going to see the game. That is how your fans feel. You have a wonderful product to sell, that is the reason we are having this trouble.

If this were a flop, you know, you would not be here and we wouldn't be here. But you have done so well and you have such popularity among the sports fans in this country and they are so eager, and that if they can't buy a ticket, they would like to see the game anyway.

Some of them take a bus and go 75 or a hundred miles just to see that game. That is what you have got. You have the best product in sports in this country.

Mr. ROZELLE. We want to keep it that way, too.

Senator PASTORE. But don't sell that poor fellow who loves you short by not being able to see the game. That is the guy we are talking about. That is the only fellow we are talking about. Perhaps this won't work, and that is what I am coming to. Why don't you try this on a voluntary basis?

Give it a try.

Let me ask you a question. How many home games here in Washington are already sold out for the rest of the season?

Mr. ROZELLE. I believe that the Redskins games are sold out here for the balance of the season.

Senator PASTORE. Every single one. Now what is this going to do to that club to show its home games on television in Washington? It will stimulate and create a new enthusiasm on the part of fans. You have more fans outside the stadium than you have in it, and those are the people we are talking about.

Mr. ROZELLE. I touch on your points in my statement, Mr. Chairman.

Senator PASTORE. All right, fine.

Mr. ROZELLE. We are told that local telecasts of local games would not affect game attendance when the tickets have already been sold and that in any event the league's only interest is in selling tickets to NFL games—when each member club has a very strong interest in achieving full attendance at its games even when all of the tickets have been sold and all of the league's experience supports the proposition that local telecasts of local games can have a dramatic impact on attendance even where tickets have been sold.

We are told that the proposal would not negatively affect the member clubs in any other way—when the proposal would in fact destroy the value of the club's radio rights and introduce factors of speculation and confusion into the sale of the member club's television rights.

The CHAIRMAN. Could I ask a question there?

I don't know of any games that are not on radio. I don't know of anyplace where you don't have them on radio. There is a good signal, and it sells a great deal of advertising on radio. Is that correct?

Mr. ROZELLE. Yes.

Senator PASTORE. That hasn't harmed the gate receipts, has it?

Mr. ROZELLE. No; we lived with radio. I think then in the old days of sports it was a concern, but it has worked out, yes, sir.

Senator PASTORE. They are still buying the tickets.

Mr. ROZELLE. Yes, sir.

We are even told the proposal would add to the club's sources of income—which amounts to the rather remarkable contention that the clubs are stubbornly and for no rational reason resisting the opportunity to make more money.

The league is also told that the proposal is entirely practical—when fact issues could arise in half a dozen or so league cities every weekend—visiting club ticket returns, standing-room stadiums.

Now what are the facts?

Professional football differs from other professional sports in a variety of ways. Among the most significant is that it simply cannot be played often. An NFL club's entire regular season consists of 14 games. A baseball team's regular season consists of 162 games, a basketball team and a hockey team play around 80 games.

Because of this, football has to maximize attendance. It can't offset well-attended games against games which are not well-attended. An entire regular season homegame schedule consists of only seven games and full-houses at each of these games become a football club's minimum objective.

It is surprising how many people do not focus on this single factor. A comparison of the crowds at football games and at other sports contests gives a totally false impression.

One of the results of this is that every cost factor is compressed into the same limited game schedule. And that includes stadium rentals. If you had chosen to examine Judge Lehr on this yesterday, you would have found that the Kansas City Chiefs will produce revenue for the stadium authorities in 1972 at a figure of \$590,000 in rental alone, that the stadium authorities get 50 percent of the concessions and the parking, that the Chiefs are responsible for all maintenance, staffing, and care of the stadium (estimated at \$500,000 annually), and that the Chiefs "nut" for the stadium use annually will run at about \$2.4 million (in rent, upkeep, and principal and interest on their own investment in the stadium). And this is for only 11 games.

Senator PASTORE. But the fact still remains that Judge Lehr testified that the burden of retiring the bonds in large measure falls on the backs of all the taxpayers who can't buy a ticket.

This does not pay off the bonds. The regular taxpayer has to pay off that bond in spite of what you pay. So it is not a profitable thing in that sense of the word. Without the stadium, you could not play the game; and without the game you could not sell the rights to television. I just bring this out to clear the record because he explained in very minute detail—he made quite a statement, Judge Lehr did yesterday—that much of the burden does fall on the taxpayer to amortize the bonds.

Now to what extent, I can't give you each dollar, but he made quite a plea on that, and the only reason I bring this up is that you mentioned his name. While it is true you do make a fine contribution, it just is not enough to retire those bonds.

The taxpayers really have to come in and pitch in.

Mr. ROZELLE. That is correct. I think the taxpayer burden will be greater if this bill passes and we reach the several games late in the season in bad weather in Kansas City. You have a sellout situation, and you have 30,000 not going there to buy hot dogs and park, with

part of that money going to the stadium authorities because they can stay home and watch it in their living room, I think that is something the good judge did not consider.

Senator PASTORE. Yes; but you see, the whole picture of the legislation is aimed at having a full stadium. That is the only time the blackout can come off. In other words, you can only open up that screen when you are all sold out. Now if you don't sell out, you have a blackout.

Now your argument is that this will discourage future purchase of tickets.

Mr. ROZELLE. No, Mr. Chairman. What I was saying was simply this, and I have figures to support this later. Kansas City sells out for *x* games next year. The blackout is lifted. It is televised in Kansas City, you have bad weather, as we have in over half of our cities.

It is sold out in Kansas City and televised. You have 20,000 to 30,000 who, rather than going out in inclement weather, stay at home, watch it on television, and the stadium authority loses on parking revenues that would have accrued to it if those people had actually attended the game. That was my point.

Senator PASTORE. Well, do you think the profit from selling those hot dogs is commensurate with the joy and the satisfaction and the enthusiasm of thousands and thousands of people who watch that game on television?

Mr. ROZELLE. Fortunately, that is your decision to make, Mr. Chairman, not mine.

The CHAIRMAN. Mr. Rozelle, I would suggest you don't use the word "livingroom", anymore, because the wives are chasing all the husbands on Sunday out in the garage and everywhere else. The livingroom is not quite there any more for television.

Mr. ROZELLE. Still another factor which distinguishes football is the manner in which television is used. Relative to the number of games actually being played, football offers more television than any other professional sport. The fans in each NFL home territory have access not only to all of the away games of their home teams, but as an average a total of 74 NFL games telecast.

And that concerns me—as it does many other observers of professional football, within Congress and without, who feel that the game is already overexposed and that there is a real risk of football following the path of professional boxing, which killed itself by TV oversaturation.

And now Congress is proposing to enact a statute making it mandatory that we invade this last precinct of nontelecasting—the home territory of the hometeam when the team is actually playing at home.

And now let's turn to the \$64 question—which seems to be: "You can't get a ticket, so why not put it on 'TV?'"

How many games were actually sold out? Fifty-two National Football League games in the 1971 season were not sellouts. Only five, including the Super Bowl, of eight postseason games sold out.

And we ask you to remember, in no case did the public anticipate the possibility of local TV and many of these were achieved by ticket sales taking place right up to the moment of kickoff. Only nine teams are sold out for their remaining games at the present time.

Despite the fact fans know NFL games will not be televised locally, there are more than 1 million unsold tickets available for the remaining 11 weeks of the season.

The 17 teams which are not sold out have a total of 904,238 seats available plus 120,073 standing-room tickets. The Super Bowl champion Dallas Cowboys alone still have 118,480 for their remaining six home games. The New Orleans Saints, with a 78,000-seat, \$130 million superdome under construction, have 129,118 tickets left for just five games at their present location.

Cleveland has nearly 28,000 tickets remaining unsold for a game with Houston on November 5.

The trouble, I think, lies in the fact that many of you gather your impressions of NFL ticket sale circumstances from the abnormal rather than the typical franchise situation—as in Washington, for example, where the situation resembles no other situation within the league.

A major contributing factor to the current interest in professional football has been our television policy—regional telecasts of the away games of each home team (which is not the most economic method of presenting games on television), outside games of other teams liberally offered, and a firm restraint with respect to telecasts which are or may be competitive with the actual game being played locally.

Overexposure is a potential danger that we have watched carefully in the past decade. Only last December we included a question on it in a special public opinion survey conducted at our expense by Lou Harris. A cross-section of sports fans were surveyed in 1,991 households—as you know, a considerably higher sampling than in the widely accepted political polls—with the following result:

AMOUNT OF PRO FOOTBALL ON TV

	Percent total football fans	Percent men	Percent women
Too much.....	21	17	27
Too little.....	7	9	5
About right amount.....	71	73	67
Not sure.....	1	1	1

In relation to the overexposure question, we have watched closely experiences in other sports. Here are some striking examples relating both to overexposure (best described as too much TV) and to local telecasts of events:

BOXING

We all remember the "Friday Night Fights," but how about the Wednesday Night Fights, the Saturday and the two Mondays? That is correct. At the peak of TV boxing popularity—from January 1953 to January 1955—there were five weekly network boxing telecasts. By May 1958 there were two, by September 1964 there were zero. The sport simply ate itself with overexposure.

BASEBALL

In 1971, with local television available, the seven games of the major league baseball divisional playoff had a total of 74,596 unsold seats. An additional 7,963 went unsold for the sixth game of the World Series and another 4,846 for the seventh and deciding game of the series.

BASKETBALL

The taxpayers of Nassau County built a modern arena in suburban New York City at a cost of \$28 million. It opened last spring, although still not completely finished, to meet the demands of the fans who wished to see the surprising New York Nets in the American Basketball Association playoff. On Friday, May 12, a sellout 15,241 fans attended a playoff game. With more seats completed, there were 15,890 on May 15. Neither game was televised locally. Then on May 20, for the seventh and deciding game for the ABA championship paid attendance was only 10,484, with the game on television locally.

Similar circumstances existed in Virginia and Utah—two of the ABA's strongest franchises—when games were televised locally.

A recent collegiate experience with the blackout is most startling. The Georgia at Tulane game on September 23, a regional NCAA telecast, was shown locally in New Orleans and prior to the day of the game we understand only 3,000 tickets had been sold for the 80,000-seat Tulane Stadium.

Contrary to popular public opinion, pro football is not without its own TV-induced attendance problems.

In 1970, the Baltimore Colts concluded the regular season with a record of 51 consecutive sellouts. Then with television available in the Baltimore area from a Washington station, attendance dropped by 20 percent—10,500—for the divisional championship playoff game with Cincinnati. And for the more important Conference championship game with Oakland the following week in much better weather, 5,300 seats went unsold because of the same TV circumstances.

The above experiences highlight the myth that proclaims all important professional sports contests are sellouts.

There is another factor. Conservatively—and some fans in Washington would probably argue with the count because D.C. Stadium is not included—15 of the 26 NFL stadiums are considered cold-weather playing sites. Others, like San Francisco and Oakland, are often plagued by rain in late season.

The "no-show" situation is one the NFL is constantly on guard against. Anyone who has watched NFL football on television—particularly games at night when sound carries—is most certainly aware of how much fan participation adds to the excitement and emotion of the sport and to the performance of the teams.

We do not want "no-shows"—persons who purchase tickets and then do not use them. And we will get them in ever-increasing numbers if local telecasts are made mandatory even under sellout conditions.

Consider some of these illustrations, all of which happened with home games blacked out:

The New York Giants each season average 2,000 no-shows per game. Last December 19, a cold, overcast Sunday, 15,134 persons who purchased tickets failed to attend a game with the Philadelphia Eagles.

The New York Jets had 42,525 no-shows for their seven games in 1971, including 16,275 for a game with the Miami Dolphins on rainy October 24. This is not an isolated experience. On November 10, 1968, 24,941 who purchased tickets stayed away from a game with Houston, and on December 3, 1967, there were 29,242 no-shows when the Jets played Denver on a cold, rainy day.

New England, in the first year in a new stadium, had 23,843 no-shows, including 11,137 as early as October 10 for a sellout with the Jets on a day of driving rain.

There are many, many more illustrations that could be made that occurred in recent seasons throughout the league—even in non-cold-weather sites like Atlanta.

The point, however, is that, despite the popularity of professional football, there are many persons who purchase tickets and then do not attend games. The number would soar if games previously blacked out were announced for television, and it should be obvious that persons then would soon stop buying tickets.

In my opinion, the bill being here proposed would in essence be self-defeating. It would virtually assure that in a period of a few years' time there would be no such thing as a sellout and therefore no local television. At the same time it would have made nonbuyers of former fans.

Stadiums would also be affected. Rentals are usually based on percentages of the gross. NFL teams ordinarily do not participate in parking income or concessions—which goes either to the stadium authorities or to the baseball tenant. Where they do, the stadium authorities usually receive a sizable percentage.

As a result, seven NFL teams operate under stadium leases which either prohibit home telecasts or require landlord approval before any home game is telecast.

The city of Pittsburgh is guaranteed \$500,000 per year from parking at Three Rivers Stadium—no matter how many fans actually drive their cars to the games. This is a contract obviously based on persons showing up for the games, not just buying tickets.

Robert F. Kennedy Stadium in Washington, which is run by the District of Columbia Armory Board through an act of Congress, and which has only the football Redskins as a professional team to attract large crowds, also controls concessions, parking, and advertising.

Despite capacity crowds which now fill RFK to watch a winning team, there is little chance this would continue under the proposed bill. If a ticketholder discovers 2 days before a game that they can stay at home and watch on television or if every fan knows that he is guaranteed the right to see any game of his choice either at home or by visiting the Redskins' office at any time before 1 p.m., on Friday, in a few years both ticket sales, attendance, concessions and parking will be affected—to the serious detriment of the stadium itself.

Again and again the point has been made by proponents of this bill that only games sold out 48 hours in advance would be affected and therefore the bill will do no damage to anybody. But human nature is such that when people get accustomed to having something free they are not likely to be enthusiastic about paying for it on other occasions.

As one sportswriter has described the present bill, it is a little like a

supermarket announcing that if it sells a certain amount of steaks by Friday, it will give them away over the weekend. Steak sales are not likely to be very promising for the first 5 days of the week.

There have been six Super Bowls played. The fourth and the sixth were in the city of New Orleans.

Each year after the first (in Los Angeles) we were asked if we were going to have a closed-circuit showing of the game at locations in the city in which it was going to be played so that local persons without tickets could see it on television.

Each time until last January we chose not to in the belief that such an undertaking would not be successful. After the fourth game (in New Orleans) a closed-circuit TV company filed suit against the NFL over our refusal to sell closed-circuit rights.

Last year we permitted that company and others to bid on the sixth game in New Orleans where fans had seen four of the five previous Super Bowls free on home TV.

The result was simply that persons did not buy what they had gotten free in the past. Though tickets were priced at \$5 less than stadium tickets, only slightly more than 1,600 fans attended the closed-circuit showing which had a total seating capacity of 14,000. The closed-circuit promoter lost more than \$25,000 because he failed to understand the psychology of the fan who already had gotten something for nothing in the past.

If home games were to be telecast, many NFL member club radio contracts would be in jeopardy. Metromedia Radio, which has four of our member club contacts, indicated to me that "if blackouts were lifted" it might cause a situation where the club would have to purchase time from the stations to get the broadcasts on the air. Regional radio networks would have to be dropped because the cost factor doesn't justify continuing losses.

It is conceivable that the cancellation of regional radio networks could have seriously damaging effects on smaller radio stations because of a lack of professional football programming availability.

It is also important to note that the member clubs participate in many local public service promotions with radio stations along their networks. Many of these promotions are charitable and this blackout measure could result in harming public service efforts for the future.

The 26 member club radio stations have invested over \$3 million in NFL game rights. Current ratings on radio broadcasts show an 80 percent drop in audience when the radio station must compete with a telecast of the same game. Wherever this bill applied, the very existence of these broadcasts would be seriously jeopardized.

In short, I think substantially every premise on which this bill proceeds is in error and that experience under it would prove just that. But by that time it will be too late.

I have talked a great deal. I think for a more personal appraisal of the impact of this bill on football clubs, I would like you to hear directly from the owners of the franchises who have accompanied me here today.

Perhaps we can take that up after the recess, Mr. Chairman.

Senator PASTORE. We will hear from them. We are recessing now. (Recess.)

Senator PASTORE. Mr. Rozelle has concluded his statement.

The Chair yields to the chairman of the full committee, Mr. Magnuson, for questioning.

The CHAIRMAN. Well, I have no further questions of Mr. Rozelle's testimony.

There is one thing that I do not know just how to handle. It has to be in-house with you people, the owners and so forth.

I wonder if there could not be some way in some of these games where there are two, or three thousand seats left, that you could have some accommodation for children who cannot afford the price of a ticket? You might, for example, have contests in the high schools for these seats.

Mr. ROZELLE. Senator, some clubs do that.

The CHAIRMAN. It would have to be a matter of the individual clubs, because it is pretty hard for an average family who has two active young boys, let us say, who want to see a football game.

They just cannot afford three tickets. Even if they could afford them, they may not be able to get them.

I thought the individual owners might do that. I think you would have to know a little more ahead of time, when you might have those seats available. They could be in the nature of contests in the high schools, and the reward be a couple of tickets to the game.

It seems to me that that would build up a lot of good feeling in the community, because these kids are just gung ho, you know, for pro football.

I am not talking about teenagers. I am talking about the father who has a couple of kids old enough to understand what is going on. You see very, very few at a football game, because of the scarcity of tickets and the cost.

I just pass that along just as a suggestion.

Mr. ROZELLE. I think that perhaps some of the club representatives could comment if they have this.

Senator PASTORE. Yes, at any point, any club member here may comment, and then we will hear them individually.

Mr. ROZELLE. I am sure you have questions. Might it be possible for the three club representatives to speak briefly?

Senator BEALL. So long as it does not take too much time, I have questions I want to ask Mr. Rozelle.

Senator PASTORE. Why do you not proceed?

Senator BEALL. In your statement you infer that if TV home games were to be carried on television, there is a possibility that the clubs would have to purchase time in order to get their time on the radio. Is there any other incident where sporting businesses have had to purchase time to get their games aired on radio, when they were also being broadcast on television?

Mr. ROZELLE. I have heard stories where clubs have had to, in effect, underwrite, or pay, to have radio or television on.

Senator BEALL. Baseball still sells their games to radio when their games are televised, do they not?

Mr. ROZELLE. Radio? Yes.

Senator BEALL. In spite of the fact that it might be televised?

Mr. ROZELLE. Some are, and some are not. I do not know what baseball is paid. I know what radio people have told me will be the consequences of this bill, if they have television competing with radio.

They say they lose 80 percent of their audience.

Senator BEALL. Part of the statement seemed to me to be far fetched. Football is too popular. I cannot imagine the day coming in our time, when football teams have to go out and pay stations to carry their games, because there are a large number of listeners in their cars.

I did have questions about the blackout itself, and the application of the blackout. We had testimony yesterday from a television owner in Scranton, who pointed out Scranton was blacked out Monday night for an ABC game, but last year, CBS was able to carry their games in the Scranton area.

I wonder about this. Then, too, make it a little more closer to home, I know in the Washington-Baltimore area; Salisbury, Md. is 118 miles from Washington and 107 miles from Baltimore. It is to the southeast of this area.

Hagerstown, Md., which is to the west of this area, is 67 miles from Washington, and 69 miles from Baltimore, and I know that Salisbury can carry the Washington games but cannot carry the Baltimore home games, and I wonder about the equity of this kind of blackout.

Then, I know that Hagerstown can carry, I believe, the Washington games, but cannot carry the home Baltimore games. As a matter of fact, I know, in Hagerstown, you used to be able to show the Baltimore home games when they were in the old NFL, but you cannot when they are in the new AFL.

I wonder about this blackout which seems to vary from location to location, particularly when they are equally distant from the two teams.

Mr. ROZELLE. Salisbury is not blacked out for the Colt games. Hagerstown is 65 miles from Baltimore. It is blacked out. Harrisburg is blacked out, 75 miles, York is 50 miles, and blacked out, and Lancaster is 55 and blacked out.

These are decisions made by the clubs. They advise us of what markets they feel would hurt them if they were not blacked out, and we, in turn, advise the networks, and in many cases, clubs are quite liberal on the blackout.

Green Bay is an example. They televise in Milwaukee when they play in Green Bay, and vice versa, and the signal is received in each city by a good part of the population. So it does vary by club.

The Scranton matter you mentioned, that was an ABC affiliate, and they are only involved when the Philadelphia Eagles play a Monday night game at home, as they did the other night, and the Eagles draw from the Scranton area, which surprised me.

A considerable number of people have developed as fans over the years, and the Eagles felt they might have no-shows if they did not come, and it might not be fair to the people who made the drive on the assumption that it would be blacked out.

Senator BEALL. But, they let CBS carry the home games.

Mr. ROZELLE. Basically, Philadelphia blacks out for their games, Harrisburg, Lancaster, Lebanon, Scranton, and Wilkes-Barre.

Senator BEALL. They did not let CBS carry the games?

Mr. ROZELLE. I think when they play the Giants, in New York.

Senator BEALL. Maybe I misunderstood. I understood the CBS affiliate in Scranton carried the Philadelphia Eagles home games, whereas the ABC station could not?

Mr. ROZELLE. I have Scranton listed as blackout area. It might be an error. I will check on it for you.

Senator PASTORE. I think what he said was to the effect that somehow in the league contract with CBS, last year, the CBS affiliate carried the home game which was allowed; but last year there was a complete blackout for the ABC affiliate on the Monday night home game it carried.

Mr. ROZELLE. Only the one game that was played.

Senator PASTORE. I think he said two games.

Mr. ROZELLE. They are only involved in one game, because it is an ABC affiliate. They would only have the rights to the Monday night games.

Senator PASTORE. And CBS was a Sunday game?

Mr. ROZELLE. Yes.

Senator BEALL. I gather, then, from your answer to my questioning, that the decision is basically made by the individual teams and not by the league?

Mr. ROZELLE. That is correct.

Senator BEALL. The league does not try to give any guidance on this as to what should be blacked out and what should not?

Mr. ROZELLE. We encourage them to limit their blackouts, because it is in our interests. But, when they feel they will be hurt on attendance, particularly with the new trend we have of improved transmission, and improved reception facilities where a station can sit out 75 miles and televise right into the heart of the city, which some of the club representatives will discuss with you, they have found it can hurt.

Senator BEALL. I find it hard to rationalize a policy that would allow a Washington Redskins' fan in a town 75 miles from Washington to see a football game when a Baltimore Colt fan in the same town, the same distance from Washington, could not see a Baltimore Colts' home game.

I think the League would have a responsibility here to exercise some sort of judgment so that people are treated the same.

Mr. ROZELLE. I think the thought there must be that—you are speaking of a city such as Hagerstown?

Senator BEALL. Or Salisbury. One team can be seen and another cannot.

Mr. ROZELLE. Salisbury is not blacked out for Baltimore, according to my records.

Senator BEALL. Let us say Hagerstown.

Mr. ROZELLE. Hagerstown is 65 miles from Baltimore. It is blacked out for Baltimore games—apparently, it is a market where the interest is in the Colts, rather than the Redskins, perhaps because of television coverage in the past.

But, it is 65 miles away from Baltimore, and is blacked out by Baltimore.

Senator BEALL. It is 67 miles from Washington, and it is not blacked out from Washington.

The only other thing I would ask is that you note, again, being logical, you say that Washington is an abnormal franchise because it is sold out so far in advance, and I am wondering if abnormal situation should not receive abnormal treatment.

Therefore, would it not be advisable, if it is an abnormal situation, to be imaginative and take an abnormal situation where you have

a sellout and allow people to see it, who cannot get into the stadium that is supported by the taxpayers?

Mr. ROZELLE. Our only answer there is that we feel if that were to be done, it would become a normal situation in Washington.

Senator BEALL. You will never know, until you try.

Mr. ROZELLE. Have you ever tried to take something away from the public, once they have it?

Senator PASTORE. That is the situation we have after giving you the exemption. You have the whole loaf, and you do not want to give the public a slice.

Mr. ROZELLE. When the bill was passed, we did not televise any of our games into a city where a game was being played. Now, that was voluntarily lifted in, about 1965. The Redskins were at home, and no other NFL games were brought in here before 1965.

The same held true elsewhere in the country. Without pressure, that was voluntarily lifted, when we reached the point that interest was sustained. We have two games coming in when the Redskins are at home. You have three games when the Redskins are away.

If this bill were to pass, you would have four games coming in here, if you had the sellout condition prevailing. You would have four games coming in here when the Redskins are at home or away. Each network would have the right, to bring two games in, and then, the wives would have some husbands farther away than the garage.

Senator BEALL. I think, if you find that is the case, and the stations had to make the decision that they would carry the game with the large audience which would be the home game of the hometown team.

Mr. ROZELLE. The Justice Department representative said, yesterday, this would eliminate any control we would have on games coming in. You would have CBS carrying the Redskins home game if it were a sellout, you would have CBS following that with another game. You would have NBC coming in against the Redskins game with a third game, and then, following the CBS pattern, bringing a fourth game in when that is over.

You would have four games in the market, which is one of the things we are concerned about in the saturation problem.

Senator BEALL. I do not want to be argumentative, but it seems to me only NBC would be concerned about that. If they are broadcasting the Redskins game, nobody else would watch the other one?

Mr. ROZELLE. Each network would have two games.

Senator PASTORE. The name of the game is viewing audience. If you saturate it with any number of games at the same time on the various networks, naturally, I think, your ratings, would fall. There is no question at all about that.

Mr. ROZELLE. Yes, sir.

Senator PASTORE. I think it would injure the networks more than you, because you have already collected the \$45 million.

Mr. ROZELLE. We have to go back to them. We do not have contracts running in perpetuity with the networks. They can fluctuate appreciably depending how they are doing.

Senator PASTORE. I can understand from where you are sitting. If I were sitting where you are, I would make the same speech you are making today. Our responsibilities here are a little different than that, however, and I repeat again, this was not born out of thin air.

The President of the United States has endorsed this bill, yesterday. This has become a national crisis.

All of this comes about, as I said before, because you fellows have done so well. You have captivated the American sports public, and yesterday, when Mr. Shelburne testified, this kind of stumped me a little bit. He said that the game out of Philadelphia could not be shown in Scranton, and Scranton is 122 miles away from Philadelphia.

Why does that hurt your gate? He said not even one busload of people out of Scranton will go to Philadelphia to see the game because it is too far away. It is almost an out-of-town game.

Why do you shut out the fans in Scranton?

You mean the local team decided that?

Mr. ROZELLE. They did, because they advised us that they have had large volume from Scranton over the years, contrary to what the witness advised you. They sold a number of tickets in Scranton.

Scranton, by our figures, is 100 miles away, and the problem that we have is the penetration, which some of the club representatives, when they are heard from, will discuss with you.

Unfortunately, the television signal goes in all directions. If it didn't, we wouldn't have some of the problems we do. But when you can sit out a hundred miles and televise to the suburbs of Philadelphia—

Senator PASTORE. But at the other end, it goes 150 miles. It works both ways.

Let me ask you this, Mr. Rozelle. We are going to hear from your colleagues, but let me ask you this other question: Is the 48-hour period bothering you, or is it the idea that you don't want any statutory interference at all?

Mr. ROZELLE. I would prefer the latter, obviously. But the 48-hour period is a problem.

Senator PASTORE. It would take care of those games in which you have a complete sellout at the beginning of the season. Where would you lose there?

If the individual is waiting for the weather, he would be taking an awful chance, because he would have to make up his mind a week before game time, rather than 48 hours.

Is the time element bothering you, or do you just want to stand pat?

Mr. ROZELLE. The time element bothers us, but I feel many of the objections I raised in my statement apply as well. But the time period is extremely difficult.

Senator PASTORE. The 48-hour period?

Mr. ROZELLE. Yes, sir.

Senator PASTORE. Being the football man you are, you intercepted the pass. How about doing this voluntarily, and then we will all know whether our guess is right or wrong? Would you like to comment on that?

I am going to ask the club owners to do the same thing. Give this a try. Here you are in Washington with a complete sellout. You can't get a ticket for love nor money because the enthusiasm is so high.

Why wouldn't it be in the public interest for the Washington club to try this thing out voluntarily and see what happens. Then if it doesn't work out, you would have the best argument in the world.

As I said before, no one is trying to thrust anything down your throat. I don't want to do anything that in the long run is going to put it off the air completely. Nobody wants to do that.

You know what the problem is and you know a lot of people talk about it. I know your interest; I think you know our interest; and I think you know the public interest.

Why couldn't you fellows get together and give this a try on a voluntary basis? What do you stand to lose?

If it didn't work out, you would cut it out.

After all, Congress went way out. We did for football, baseball, basketball and hockey what we didn't do for anybody else. We exempted you from the antitrust laws. We gave you an opportunity to bargain as a package, which gives you the opportunity to up your ante with the networks.

As a result of this, the first year of the exemption each team received \$332,000 from the television package; now it is \$1.5 million per team. So you do make a lot of money because of broadcasting, and all of this has been made possible by the public.

The airwaves belong to the public; you are using them, and you have a right to use them; and you have a right to make a profit on it.

Now, all this Congress is saying or that the President is saying and all of the fans are saying is, "Why don't you give an opportunity where you have a complete sellout?" Maybe 48 hours isn't the right time. Maybe it should be a little longer just so you wouldn't get to this thing of people going from the front of the line to the back of the line.

Why don't you give it that try and see what happens, and if it doesn't come out right, we drop it; and if it comes out right, why, then, we don't have to bother with it; it is something you have done on your own.

What do you have to say to that?

Mr. ROZELLE. Mr. Chairman, we would be very happy to explore anything. We don't want to be adamant, either. We just don't want to kill our sport. We would be happy to consider anything.

I would, however, respectfully like to correct one phrase where you exempted us from the antitrust laws. I frequently see this in the press, and if the National Football League is exempt from the antitrust laws, as some people suggest, and I don't think you want to infer that, I wish they knew about the 19 people suing us under the antitrust laws.

What was done in 1961, as you know, the National Football League and other sports were given a very limited exemption from the antitrust laws, which was primarily done for the NFL. The NFL was given the right to package its rights and sell them, something that many other sports were doing at that time without opposition. And the NFL was singled out because of the earlier court decree in which language of Judge Grim stated in his decision, that the NFL alone was barred.

We did receive along with other sports the very limited exemption which we are deeply appreciative of. It has permitted great stability.

Senator PASTORE. It has to do with your right to sell television rights as a package; and that is what we are talking about.

We understood your problem and gave you that concession. Now you say to me that at that point in 1961, I think you said in your statement the blackout was not an issue.

I agree with you. I am telling you this frankly, Mr. Rozelle. If today you came before the Congress to ask for that exemption, you could bet your bottom dollar that the blackout issue would be an issue.

You know why?

Because you have come a long, long way in those 11 years.

Frankly, I repeat again, had this whole thing been a flop, there would be no problem. But you have done so well, you have inspired so many people and built up such a family of fans. That is the reason why we have this problem.

We would like to resolve this in an amicable way. To test it to make the fans happy without making you too unhappy. I think that would be the answer. Because I am telling you very frankly, there is a bill pending on the floor of the Senate, and this question is going to come up.

I had an informal discussion with you. I told you at that time that I was not going to initiate this amendment until you were heard. I think you have a right to be heard. I don't think this should be thrown at you summarily. I don't think anybody should treat it that way. I think the industry and those in this area of sports ought to be heard.

Now we are giving you a full hearing. But if this bill came up as an amendment, especially now that it has been endorsed by the White House, anything is apt to happen.

I was wondering if there were some way that you could get together with your club owners and see if, somehow, we couldn't do this on a more amicable and voluntary basis. Just to give it a good try.

I yield to the Senator if he has any questions.

Senator HART. No questions, but just to welcome the Commissioner, and his associates.

I agree with him that there is a general misunderstanding, not on the part of the chairman, but by the public as to what we did in the early 1960's with respect to organized team sports under the antitrust law.

We did not and we have not exempted football from the antitrust laws. That doesn't respond to the problem of whether the gate is affected by cold weather. I am convinced it is, and no-shows accumulate as the snow falls, and I know that.

That is under existing blackout of home games, and if you open the home games, eventually you are going to affect the season tickets, and I am convinced of it, and I acknowledge that all of us, whatever we are—part of what we were is what we were.

Once upon a time, I had an interest and a major responsibility for a football franchise. I speak with a sense of some early prejudices, but I am grateful to the chairman that he has given us an opportunity to get some facts.

There are misconceptions that these hearings, I think, will to a fair reader correct.

Senator HARTKE. Mr. Chairman, could I ask a question?

I would like to say that I agree with the chairman sitting where you are, but what we have here is the distinction between proprietary rights and public rights, and the second hidden issue is the CATV thing, which has not been discussed. I would like to put in the record at this time the Notice of Proposed Rule Making on Docket No. 19417 before the FCC.

Senator PASTORE. Would the Senator yield at this point? There is a vote on.

Senator HARTKE. I understand that.

Senator PASTORE. Could you do that after 10 minutes?

Senator HARTKE. I would like to put this in the record at this time. (The document follows:)

[FCC 72-109, 74711]

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION, WASHINGTON, D.C. 20554

Docket No. 19417; Rule Making No. 1836

IN THE MATTER OF AMENDMENT OF PART 76 OF THE COMMISSION'S RULES AND REGULATIONS RELATIVE TO CABLE TELEVISION SYSTEMS AND THE CARRIAGE OF SPORTS PROGRAMS ON CABLE TELEVISION SYSTEMS; PETITION FOR RULEMAKING; AMENDMENT TO SECTION 76 OF THE COMMISSION'S RULES AND REGULATIONS RELATIVE TO CABLE TELEVISION SYSTEMS FILED BY CHANNEL 6, INC., LICENSEE OF TELEVISION BROADCAST STATION KCEN-TV, TEMPLE-WACO, TEX.

NOTICE OF PROPOSED RULEMAKING

Adopted: February 2, 1972; Released: February 3, 1972 By the Commission: Commissioner H. Rex Lee absent.

1. Notice is hereby given of proposed rulemaking in the above-entitled matter.

NATURE AND SCOPE OF THIS PROCEEDING

2. The Commission is today embarking on a new regulatory program for cable television. See *Cable Television Report and Order* (FCC 72-108), and Letter of August 5, 1971, 31 FCC 2d 115 (1971). In the Letter we discussed several aspects of sports programming including the relationship of Public Law 87-331, Title 15, U.S.C. §§ 1291-93 to cable television. This is a complex area involving the effect of telecasting on gate receipts of sports teams and their ability to survive or thrive. Consequently, we welcome Congressional guidance. But in the interim or if Congress chooses not to legislate in this area, we believe that we should institute this proceeding in accordance with the representations made in our Letter so that established Congressional policy will be implemented "before the significant emergence of new systems under [our] new rules."

PUBLIC LAW 87-331

3. Comments received in our rulemaking proceedings in Dockets 18397, 15 F.C.C. 2d 417 (1968) and 18397-A, 24 F.C.C. 2d 580 (1970), indicated that sports interests would generally have us ban the carriage on cable of professional sports events not broadcast by local market stations. The other extreme, of course, is to allow the carriage of whatever sports events appear on the stations that cable systems are permitted to carry under our rules. The middle ground is Public Law 87-331 and we believe that where Congress has already acted we can and should initiate rules for cable television.

4. The legislative process culminating in Public Law 87-331 was precipitated by the emergence of the American Football League and two cases of the same name: *United States v. National Football League* 116 F. Supp. 319 (E.D. Pa. 1953) and 196 F. Supp. 445 (E.D. Pa. 1971) (*construing final judgment of cited 1953 case*). A synopsis of these cases aids in understanding some of the basic issues involved in the subject proceeding.

5. Prior to 1953, the bylaws of the National Football League prohibited member teams from telecasting their games into an area of 75 miles radius of another team's city—without the consent of such other team¹—on the day that such other team was playing at home or was playing away from home and causing its game to be televised by a station within 75 miles of its home city.² For

¹ The Court found that it is the general policy of the clubs to withhold such consent. *United States v. National Football League*, 116 F. Supp. 319 at 321.

² Certain exceptions to the 75 mile rule existed; e.g., when league cities were within 100 miles of each other. *Id.*

example, if the Cleveland Browns were playing at home or if they were playing away from home and selling the right to the game to a station within 75 miles of Cleveland, no other team could sell television rights to their game within 75 miles of Cleveland.

6. In his 1953 decision Judge Grim held that the provision of the National Football League's bylaws that prohibited the telecasting of other games into the home territory of a team that was playing at home was a reasonable method of protecting attendance at games and not violative of the antitrust laws. However, when the home team was playing away there was no gate to protect, consequently the restriction on telecasting other games into the home territory of a club, not playing at home, was an unreasonable restraint on trade.³ In 1961, the National Football League sought a construction of the final judgment entered in the 1953 case to determine the validity of a contract entered into by the League and the Columbia Broadcasting System. The contract gave CBS the exclusive right to telecast regular season games of the League with the proceeds from the sale to CBS to be distributed equally among the League teams. The contract represented a departure from the previous practice of League members of individually negotiating and selling television rights. The Court found that this pooling arrangement eliminated competition among the League teams in a manner inconsistent with the 1953 decision and barred the enforcement of the contract. The 1961 decision, however, did not run against the American Football League which had sold a similar package to ABC in 1960 and 1961. Legislation was sought to remedy this alleged inequity and the result was Public Law 87-331.

7. *Proposed Rule.* Public Law 87-331 is divided into three sections. The first, in relevant part, provides an exemption from the antitrust laws for professional football, basketball, baseball and hockey so that "packaged" or "pooled" television rights may be sold by the League for games of the member clubs.⁴ The second section provides for television blackout of games in the home territory of a team when it is playing at home. The third section effectively ensures that the professional football teams will not play, or cause their games to be telecast into areas where collegiate football is being played, on Friday nights or Saturdays. While we propose no rule, we specifically request comment on whether regulation is needed to carry out the purposes of Sections 1 and 3.

Section 2 of Public Law 87-331 (Section 1292 of Title 15 U.S.C.) states:

"Section 1291 of this title [exempting joint agreements to sell television rights to sports events] shall not apply to any joint agreement described in the first sentence in such section which prohibits any person to whom such rights are sold or transferred from televising any games within any area, except within the home territory of a member club of the league on a day when such club is playing a game at home."

8. The legislative history of Public Law 87-331 indicates that Section 2 of the Act was included for the purpose of maintaining, when joint agreements for pooled television rights were sold, so much of the restriction on the televising of sports events as the Court believed was not anticompetitive in *United States v. National Football League*, 116 F. Supp. 319 *supra*—blackouts when the home team was playing at home. See 107 Cong. Rec. 18852 (daily ed. Sept. 30, 1961) (remarks of Congressman Rogers and of Congressman Celler); and H.R. Rep. No. 1178, 87th Cong., 1st sess., 5 (1961).

9. We believe that the following proposed rule will accomplish the above-described intention vis-à-vis cable television carriage of sports events:

"When a professional baseball, basketball, football, or hockey team is playing at home, no cable television system located within the predicted Grade B contour⁵ of a station located within the home city of the team shall, without the consent of the home team and its league, carry the television broadcast of a professional game of the same sport if such event is not available on a television station that:

"(a) is located within 35 miles of the reference point of the community of the system or

³ The Court also found illegal all territorial restrictions on the sale of radio broadcasting rights and the exercise by the Commissioner of the National Football League of powers granted to him under the League's bylaws to disapprove television contracts because such power could effectuate illegal trade practices. *Id.* at 330.

⁴ The first section of Public Law 87-331 was amended in 1966 to provide immunity from the antitrust laws so that the American and National Football Leagues could merge.

⁵ We also invite comments on whether we should parallel our signal carriage rules by establishing a fixed mileage zone of 35 miles.

"(b) has an audience in the county or community of the system meeting the significant viewing test set forth in Section 76.54 of the Commission's Rules and Regulations."

While Public Law 87-331 provides for blackouts when there are pooled or package arrangements, it does not specifically provide for restricting telecasts—either by broadcast or by cable—of sports events in "home territories" of teams when the team is playing at home and pooling is not involved. Because Congressional policy does appear to focus on the protection of gate receipts for home games, our proposed rule does not distinguish between sports teams that pool their rights and those that do not. This is, of course, an appropriate area for comments—specifically, whether cable systems should be permitted to carry sports events in "home territories" when a team is playing at home and when there is no pooling agreement.

10. From the guidance of the legislative history, we believe that the most effective manner of preserving blackouts, vis-à-vis cable television systems, is to fashion such protection along the line of the actual usage of the sports black-out by the teams employing it.⁶ If a sports event is to be blacked out in a certain area, the event will not be sold to any station located in the area which is desired to be blacked out. We believe, then, that the Grade B contour of stations located in the home city of the team in question represents the area in which cable systems must comply with the blackout. By stations located in the home city we mean those licensed to the city itself or nearby communities that serve the home city. The home city of a team that plays in more than one city, e.g., the Virginia Squires or North Carolina Cougars, would be the home city in which the team is playing on a particular day. Because different leagues recognized varying distances for "home territories," we seek comments on whether cable systems not located within the Grade B contours of stations in a team's home city but within their "home territory" (where a broadcast station might be subject to a blackout) should fall within our proposed rule and whether a fixed mileage zone would be preferable to the proposal for Grade B contours. We also request comments on whether there should be different criteria for carriage of the home games as against the games of some other team. With respect to television broadcast stations not located in the home city (or within the "home territory") of a professional team, we do not believe that distant sports programming should be blacked out on cable systems located within the Grade B contours because such blackout would not conform to the purpose of the blackout rule—protecting attendance at games. Finally, we contemplate that cable television systems would, in any case, be permitted to carry sports events on local stations or on those significantly viewed. Since these games are viewable off the air in the community of the system, this reflects the practice of the team or leagues involved.

11. Channel 6, Inc., licensee of Television Broadcast Station KCEN-TV, Temple-Waco, Texas, has filed a petition for rule making, R.M. No. 1836,⁷ proposing the following rule:

"Whenever carriage of a sporting event is 'blacked-out' to a television broadcast station either by the promoters of the event or by the network with which the station is affiliated, such sporting event shall not be carried by any CATV system operating in the whole or in part within the predicted Grade B contour of said 'blacked-out' station"

We are incorporating Channel 6's petition into this proceeding. Parties are, of course, free to comment on the proposed rule set forth immediately above and may introduce other solutions thought to be appropriate.

OTHER ISSUES

12. Aside from Public Law 87-331, a number of other questions have been raised (e.g., the effect of cable operations on minor league baseball; see comments of the Commissioner of Baseball in Docket 18397-A). Most importantly, the argument is made, particularly by representatives of the baseball, hockey

⁶ H.R. Rep. 1178, 78th Cong., 1st Sess. 5 (1961) states: The term "home territory" is not susceptible of a single definition that will be suitable for all professional football, baseball, basketball, and hockey leagues. By "home territory" the committee means such home territory as is recognized by a particular league's bylaws or custom and usage.

⁷ Channel 7, Inc., licensee of Television Broadcast Station KLTU, Tyler, Texas, filed a petition for rule making requesting the adoption of a rule identical to the one requested by Channel 6. The disposition of the Channel 6 matter, through incorporation into this proceeding, should also satisfy the request of Channel 7.

and basketball leagues, that unrestricted importation on distant signals of games of the same sport will undermine the ability of sports teams to obtain substantial revenues from the sale of packages of games (both home and away). We seek comments on these matters and as to the appropriateness of adopting rules for other sports events, e.g., golf, automobile races, college sports, etc. and on both the legal and policy aspects of any suggested action.

13. Because any action should be taken before significant numbers of new cable operations have commenced, we intend to complete this rule making proceeding expeditiously. Parties are therefore put on notice that requests for extension of time to file must be accompanied by a very strong showing of unusual circumstances—and not a recitation that the matter is an important, complex one or that it takes time for the group or association to canvass its members. Such matters have already been taken into account—along with a need to bring this proceeding to a speedy close—in fixing the filing date.

14. Authority for the proposed rule making instituted herein is contained in Sections 2, 3, 4(i), (j) and (k), 301, 303, 307, 308 of the Communications Act.

15. All interested persons are invited to file written comments on the rule making proposals on or before March 16, 1972 and reply comments on or before April 6, 1972. In reaching this decision on this matter, the Commission may take into account any other relevant information before it, in addition to the comments invited by this Notice.

16. In accordance with the provisions of Section 1.419 of the Commission's Rules and Regulations, an original and 14 copies of all comments, replies, pleadings, briefs or other documents filed in this proceeding shall be furnished to the Commission. Responses will be available for public inspection during regular business hours in the Commission's Public Reference Room at its Headquarters in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

Senator HARTKE. You talk about rights.

Do you really think you have rights to use television, or privileges?

Mr. ROZELLE. I think everyone who uses television should consider it a privilege.

Senator HARTKE. When you talk about selling rights, you don't have any rights. I agree with the chairman that you have been very successful, but I do not see how you can come before us and in sort of a cavalier attitude say that you are entitled to go ahead and have the protection of your gate receipts by television.

This is a public medium. Foreign broadcasters, they don't have—they are nationally owned. I would say to you, I am inclined to say that maybe we ought to go ahead and completely take over the whole operation, and maybe take the proceeds from the television rights, as you call them, which I say are privileges, and give the money to public broadcasting to pay their bill.

I don't understand how you can in good conscience come and say that it is the obligation of Congress to protect your gate receipts and proprietary interests with the public airwaves which are a privilege.

You have the law passed, and you have the privilege of pooling to make this television agreement. Now you are coming here and saying that simply because you have gotten rather wealthy from the operation that the Congress has the obligation to keep you wealthy.

Is that your contention?

Mr. ROZELLE. It is not, Senator, and I do not feel that I have come in a cavalier manner. I feel that I was invited here, and we appreciated the opportunity of giving our position on a rather complex matter.

We are not asking for anything. We are attempting to explain what we feel in our best judgment will happen to our sport, and that it is your decision, and the rest of your members.

Senator HARTKE. What I am saying to you, though, is you collect money which you distribute among your various owners in a proprietary fashion for selling the television privileges, do you not?

Mr. ROZELLE. That is correct.

Senator HARTKE. You also collect your gate receipts. I grant you this has been the customary habit, but I don't see anything in the law or the public interest to merely guarantee that the football owners get wealthy.

I want to see the games covered. But you go to Europe and you will see the corporations, the broadcasting units which are owned by the government. They broadcast every sporting event, and they have just as much enthusiasm for their sporting events as here.

This is not a peculiar phenomenon in the United States. You go there and you will find all that.

I would say to you quite honestly that if I had any suggestion to make to you, I would say grab Senator Pastore's offer and run with it fast, and I wouldn't make a long pass.

Thank you.

Senator PASTORE. I want to make the record clear. These gentlemen are invitees of the committee, and we are very, very happy to have them here.

Senator HARTKE. Mr. Chairman, I don't want to be misunderstood, but I still take it that the thrust of his statement is the financial interests of these clubs. That is not what television is all about. I think constantly we find this situation repeated over and over again, very simply the fact that somehow or other Congress has the obligation to protect proprietary interests against the public interest, and I think that is wrong.

Senator PASTORE. Well, that is our decision to make, and of course they have a position to maintain, and that is what they are here for, and that is what they are doing.

In the ultimate, of course, that is a decision we have to make.

Here we are, you disagree categorically with the Senator from Michigan. Maybe I disagree with him, but he has just as much right to express it as we do, and then when we get together in the subcommittee and the full committee, we will have to make a decision.

Mr. ROZELLE. Senator, I might make one added comment. Taking an extreme, of course, the motion picture industry sells certain movies to television under certain circumstances. "The Godfather" is sold out, and has been at a number of movie theaters. I would like to see that in my living room.

Senator PASTORE. I don't want to see it in my living room.

Senator HARTKE. Mr. Rozelle, do you think CATV should be permitted to come in here? That is a problem under this rulemaking provision here. Do you think that CATV should come in here and be permitted to sell for a fee the home games while they are being played out here in Washington, D.C.?

Mr. ROZELLE. They are asking the FCC at this time for the right to pick up by microwave our football games and take them any place they choose in the country, and as many of them as they wish.

We are before the FCC now.

Senator PASTORE. Mr. Rozelle, will you pause? We have only 7½ minutes to make the vote, we will be right back.

(Recess.)

Senator PASTORE. I hope that you gentlemen will be patient. There is a lot of activity on the floor. You have noticed that the Senators will leave and come in, so don't be too surprised if they are not all here at one time.

There are other witnesses here, too. We have quite an imposing list today, and this is a very important matter, and we want to give everyone a chance to be heard. We have Mr. Carlson here, president of the American Basketball Association.

Is he in the room?

He is? Then there is Mr. Ruck.

Mr. RUCK. I am here.

Senator PASTORE. Is Walter Kennedy here?

Mr. KENNEDY. Yes.

Senator PASTORE. And there is a Mr. Rubin. Is he here? I understand he stepped out. Is Mr. Ficker here?

I was going to say that after we get through hearing these gentlemen, and I don't know whether or not we can finish even with them, that we will recess until 2 o'clock. So if there is anybody in the room who feels that they would rather not stay and would rather come back at 2 o'clock, you may do so, because I don't think we will reach you. I am addressing that to Mr. Kennedy, Mr. Carlson, Mr. Ruck, Mr. Rubin, and Mr. Ficker.

Who would you like to have speak next?

Mr. ROZELLE. I would like to have Mr. Art Rooney speak to you briefly first. He has had his franchise for 39 years.

Mr. ROONEY. I would like to start off by saying that I know that you are sincere in the way you think about this, but I think, if you were over here, you would think maybe the way we think.

I think if I were on that side of the table, I would think exactly the way you think. There is not any doubt in my mind about it.

For instance, just to give you an idea. I wrote a letter today to one of the club owners that I had to be with over the weekend. We played them in St. Louis on Sunday, and I was with him in Chicago for a couple of days. So I wrote to thank him for the fine time he showed us, and I mentioned that I was here with Commissioner Rozelle and Mr. Phipps and Jimmy Finks. But I said, "There are not enough of us."

But I really believe, I sincerely believe that if we could express ourselves, the fear that we have about this, then I think we would have a much better chance than what we have.

For instance, in Pittsburgh last year, it was the biggest season that we have ever had, financially, at the gate. We took in, just in football, not counting the television, we took in around \$3,300,000.

That again was for our exhibition or preseason games, plus our home games and away games. Had we not received money, for instance, for going into the American Conference, plus the expansion money, the Pittsburgh Steelers would have lost money last year.

That is what I am alarmed with, if this bill would pass, if you did away with our blackouts. I just hope that you are right. I just hope that it is the way you people think it is. The thing I have been in most of my life is sports, and I have been in boxing and racing and basketball.

I think what worries me about it is that right now going to professional football games is the thing to do, and I hope it will always be that way, but it won't be if we get to the place where we show 14 games on television at home. I hope that isn't too much. The uncertainty of the game is that we have only sold out our stadium twice.

That is, twice last year we sold it out. This year, for instance, we sold out our first game. We sold it out the day of the game. Now the Pittsburgh Pirates are in the playoffs. We are scheduled to play Houston. If the Pirates beat the Cincinnati Reds, we will have to transfer our Houston game to Houston.

If the Pirates win the playoff, and they get into the World Series and the World Series would go seven games, or if there would be rain-outs, we are supposed to play New England on that Sunday of the seventh game.

We would just have to continue to delay it, to take effect Monday, Tuesday, Wednesday, and so forth. The thing that I would like to point out is for the other games, later on in the season, Minnesota, Kansas City, Cleveland, and Cincinnati.

We have sold a lot of tickets for those games. For the New England game and the Houston game, we have sold very few tickets because of the uncertainty of when the game is going to be played.

What alarms me about this is that if we would wait until Friday before we would have a sellout, the people would wait, and then if it would come up bad weather, they would not go to the ballgame. They would watch the other games on television, and well, I will put it this way, that one of the nice things about owning the ball club, and they tried to do away with it this year—Mr. Phipps, I think, was the man who wanted to put the owners out of the press box.

I told him, I said: "You pass that, and you have lost a customer." I said I would quit going when I can't sit in the press box and eat the hot dogs for nothing and be a big shot. "There is the guy that owns the ball club," and so forth.

I said, "At my age, if I have to go out and get shoved and pushed to get into the stands, I am not going to go any more."

I believe that that could happen very easily, that if we show 14 games, if we show 14 games on the television, I am afraid that maybe it will get to be the thing not to do.

I think maybe—

Senator PASTORE. Well, the only thing is this. Of course we are skipping over something. I can see the import of your argument, but you would only be asked to show those games on television if you had the sellout. Now your argument of course is that maybe you would not have the sellout. That is the logical argument that has to be developed and taken into consideration.

But you have to realize this bill is only directed towards a complete sellout. The argument you gentlemen have is the idea that the people will wait and you won't have a sellout. In the long run that might hurt you, and that is an argument that has to be considered by this committee.

But I don't think you should go off with the notion that we are compelling you to televise local home games when you don't have a sellout. That is the difference here.

Mr. ROONEY. Really, Senator, I hope I am right, I hope what I am about to try to say that I believe. I would like to believe—I would like to think that I am telling what I believe.

I am thinking as a fan, I would hate to see this game get to the place that it won't be the thing to do, that you would see enough of this every Sunday, and you wouldn't care to, or you would be satisfied never to go back to see the ball games. It would be something that is alarming to me, and that is one of the things that I believe it is going to be hard for me to convince you of.

I recognize that. It is hard to convince anybody of that. But I think that if you were out here, that it would be more alarming to you. I don't exactly mean selfishly, which, of course, I am, and that has to be No. 1, that I would be selfish.

Senator PASTORE. All right. Take your position, and you have a point. Now what is your answer with reference to the agitation and the drive on the part of so many fans who have become somewhat disappointed almost to the point of consternation with the fact that they can't buy a ticket, and they still can't see the game of their choice, their home team.

Now what do we do? If you are sitting where I am, would you consider the club owner, or would you consider the public at large?

Mr. ROONEY. It is a hard question for me to answer.

Senator PASTORE. But wouldn't you have to weigh it and try to strike a balance that would make reason? You can't go all one way, and you can't go all the other way, but somewhere in between there has to be an answer. I am telling you this. This is not going to die with this hearing. The House is already planning an investigation. As I have remarked, and I did not mean to be facetious about it, it has already hit the White House.

The President has said he would like to sign this bill before we go home this session. That is the word that comes out of the White House. Now this thing is growing and growing and growing. That is why I said to Mr. Rozelle that I hope we can find a solution to this that won't hurt the game, won't hurt the box office, and at the same time will bring some kind of satisfaction to those people who have been standing in line and can't buy a ticket.

There is a friend of mine who together with his sons wanted to go and see the Redskins-Green Bay Packers game on November 26. Well, my office called up to find out if any tickets were available and they almost laughed in his face. There was no ticket to be had.

Now you have thousands and thousands of fans within a home territory who can't buy the ticket, and can't see the game, and write letters to their Senators.

Now what would you do if you were a Senator? Sit back and say: "Well, maybe this thing will blow away." It won't. At some point, this thing has to be resolved one way or the other. I hope it isn't resolved in the way that football popularity begins to decline. I hope that is not going to be the answer. It is like that fellow who says: "The only way I can build a house cheap is by having a recession."

Well, that is nonsense.

Mr. ROONEY. I hope just that.

Senator PASTORE. You are paying big money for your players today because they are looking at the box office, too.

Mr. ROONEY. The ballplayers?

Senator PASTORE. Ballplayers, football players. They read the stock market.

Mr. ROONEY. Well, I don't think we have to worry about having a tag day for the ballplayers. They look at the box office, all right. I gave you our figures, and I think that Mr. Phipps can give you some idea of that.

The only thing is, like I say, I believe there is not any doubt that you and the fans that are writing the letters believe just exactly what you are saying.

I believe that there is a very dangerous position here that can hurt the game. I just hope that if home-team blackouts are lifted when a game is sold out it will be the way you think and the way I am sure I would think if I were on the other side and did not have the experience of a club owner.

Senator PASTORE. I understand your position completely, and I want to thank you for coming.

Mr. ROONEY. Thank you.

Senator PASTORE. Mr. Rozelle?

Mr. ROZELLE. Mr. Phipps, chairman of the Denver Broncos,

Mr. PHIPPS. Mr. Chairman, I would like to say, first of all, that I can back this up with facts and figures, although I do not think it is really necessary; that I have one very sincere objective in mind in being an owner, and that is that I was born and raised in the city of Denver.

All my allegiances are there, and my purpose in being in the game is to see that football remains in the city of Denver.

To go further, I would have to explain, I believe, the very unique situation that we have at our stadium in Denver. Unlike many that you have heard about, testimony on the Kansas City Stadium, and so on; this stadium was acquired by the city of Denver in 1946 or 1948 by means of a public fund drive in which public contributions were collected, turned over to the city, the city acquired the stadium as it then existed, and it would then seat 35,000 people.

Shortly thereafter, the city issued a \$3 million bond issue which financed the addition of some 16,000 seats to the stadium, so we now have a seating capacity of slightly in excess of 51,000 people.

The financing of this bond issue is handled entirely by the income generated by the stadium. That income consists of rental payments that we make to the city, the 10-percent charge on all admissions that goes directly to the city, concession revenues, which the city receives entirely, and parking revenues, which they also receive entirely.

From all of these proceeds, the city must not only meet the bond issue, but it must also meet the maintenance and operating costs of the stadium.

Our lease agreements with the city, which in the case of football runs for 20 years, provides for a minimum rental payment to the city. In our first year of operation, in the new stadium, when we played to approximately 80-percent capacity, the 8-percent rental payment that we make to the city did not meet the minimum requirements of the rental agreement in the lease, and we were required to come up with more money than the percentage.

In addition to that, the city does not guarantee the bond issue. The bond issue is guaranteed by us as tenants.

In the event that income generated from the stadium is not adequate to take care of maintenance, operation, and servicing of the bond issue, we are required, under our lease, and under the bond ordinance, to come up with the difference.

I think you can see the effect this situation would have on our financial position in the event that our attendance dropped substantially below what we have had in the last 2½ years, which is a sellout situation.

It is our honest opinion that if this measure should pass, the eventual effect, and I do not mean immediately, but I would say over approximately 3 years, would be for our season ticket sales to drop from approximately 48,000 to where they now are, to not over 30,000.

The reason for it is very simple. Let me put myself in the position of a season ticket buyer, in a 51,000-seat stadium. We have approximately 25,000 seats that would be called choice, between the 20-yard lines—high enough to have a good view of the field, plus the end zone seats, which are lower priced.

If my priority is not sufficiently high to acquire one of these choice tickets, I hardly believe that I would put down the money that is required for a season ticket when I am assured by this legislation that 48 hours, or even a week before the game, I would acquire a ticket as good as I could get on the season ticket basis, and that if the stadium is sold out, that I can see it in my home.

Our estimation is, very honestly, that our average attendance would drop by not less than 10,000 to 15,000 per game. We have never had a contending team. We have struggled and tried, but we have not made it yet.

We are the subject, then, of three factors. We have a situation where a buyer is told that he can get a ticket a week before the game. But, if the stadium is sold out, he can see it at home. Then the question is, do we have a contending team? Do we have an attractive opponent, and is the weather condition going to be such that I am not going to be able, and willing to go out and sit at that game.

Our weather conditions, although we pride ourselves on our climate, our weather conditions can be anything but ideal. We can have blizzards as early as the 2d of September, and we can have——

Senator PASTORE. May I interrupt you for just a moment, sir? Did you have a preseason sellout this year?

Mr. PHIPPS. No, sir. We did not. We had two games at home. Our stadium also accommodates baseball, and our seating capacity in the baseball configuration is approximately 43,000. We have some 9,400 seats on the east sideline, which is center and left field for the baseball configuration.

Our first preseason game at home was against the New England Patriots, the stadium was in the baseball configuration and we were slightly below the sellout.

In the second preseason game, where we had the football configuration in place, we were close to a sellout. I think we were a few hundred short.

Senator PASTORE. How many more remaining home games do you have?

Mr. PHIPPS. We have five.

Senator PASTORE. Do you have them all sold out?

Mr. PHIPPS. We had 600 seats remaining for the final game, against New England, in mid-December.

Senator PASTORE. Would we not be in a better position to know exactly how to proceed in this matter if you did open up the next home games to television, because they are sold out? You said that last year you had a pre-season season ticket sale of how much?

Mr. PHIPPS. 48,000, sir.

Senator PASTORE. If that dropped appreciably, then I think your argument would hold water.

Mr. PHIPPS. If it does drop appreciably, sir; we have destroyed—

Senator PASTORE. The minute you ascertain that, before the season starts, the public will be told that there is going to be a blackout because the seats are not sold, and they will come and buy the tickets.

I am afraid, a little bit, that you are underselling yourselves, gentlemen. You have a wonderful product, and you are trying so hard to prove the weakness of it. I think it has a tremendous amount of strength.

Now, maybe there are a certain number of people who would like to wait for the weather and things of that kind, but that would be more than made up, and a lot of people have been turned away.

You would be surprised how high this enthusiasm runs. People stay up at night, the late hours of the night, to find out how the ball team made out. Some of them have a sad day if their favorite team loses. I repeat again, I can see the force of your argument. I can see your position, and understand it to a certain extent, but I am wondering where do we go from here?

If we take your view entirely, the public is denied, the public has been somewhat aroused by this.

If we listen to the public entirely, you say you are going to go out of business, or you are going to be hurt. Somehow we have to find an answer to this, and it cannot be either extreme.

Mr. PHIPPS. I know that human psychology is a very difficult thing to understand, but I am convinced that the reason that we are able to sell the tickets that we are now able to sell on a season basis, and this is our protection against weather conditions, the status of the team, the opponent and so on, is because, as Mr. Rooney has commented, because it is the thing to do, and people know if they do not buy a season ticket they are going to have a very tough time seeing the game.

Now, once you eliminate that psychology and say you do not have to buy a season ticket they are going to have a very tough time seeing the game.

Now, once you eliminate that psychology and say you do not have to buy a season ticket in order to see a game, the season ticket sale goes down.

Excuse me, sir, may I finish?

Just one more statement, I would like to make.

Frankly, I get very tired of some of the comments I hear all over the place about the wealthy and greedy owner. I have a very substantial investment. My return has been less than the average salary of a good rental guy. If we lose as many as 10,000 average attendance, at our regular season games, we are in the red.

I was going to explain further, our situation with the stadium. We guaranteed this bond issue. If we lose attendance the city loses income from parking, the city loses income from concessions. Their operating costs remain the same.

We have to meet the minimum rental payments and bond payments, and we have to meet the operating costs. As I said, at the beginning of my statement: my one interest is to maintain professional football in Denver.

I mean this, from the bottom of my heart, I can see this as the first step to seeing that Denver cannot keep professional football.

Senator PASTORE. Well, would you admit that the one thing that made football what it is today has been television?

Mr. PHIPPS. There is no question about it, sir.

Senator PASTORE. And television is in the public domain. It belongs to all the people of the country, and because you have been able to utilize it, and you have a right to utilize it, you have been able to gross \$45 million to \$50 million a year, which not only goes into the pockets of the owners, but into the pockets of the players, too.

Now, this has been made possible by the American public, made possible by the Congress of the United States. This phenomenon has been used by professional football to generate a lot of friendship, a lot of enthusiasm, and things of that kind.

Now, frankly, I think you owe us a little something, too. I do not think we owe you a full house. I think the public is deserving so that, when that house is full, they ought to come in a little bit on the play. That is the question that is before us.

If it had not been for television, you could not fill a stadium with 51,000 people. You could not fill the Robert Kennedy Stadium, here at Washington. It is television that made professional football the darling of the sports fans of this country.

You are able to negotiate on the national level, and you not only show your game in your own Denver, you may show your game in Boston, or Washington. All this has been made possible by the investment of the American people. We gave you an exemption under the law, under the antitrust laws so that you could take advantage of this, and negotiate as a package. You did.

When you did it singly, as a club owner, you did not get the same advantages as you do when you do it as a package. You find the weak team leans as a crutch on the strong team, and you negotiate as a body.

I mean, there you are. You have been given an exemption under the law in order to deal as a group, and because you have that solidarity, because you have that exclusivity, because you have that monopoly, you are able to gross a lot more than if you acted in your own individual capacity. And we made that possible.

Now, we are only saying, give us a little bit back. That is all we are saying: "Give us a little bit back." "We cannot afford to give you anything back," is what you are saying to me, not even a crumb from your table. That is not right. That is not right.

Mr. PHIPPS. Senator, I can only speak for my own operation, and I would agree in general with everything you have said, except for one point. If I may make it, sir. Approximately 30 percent of our income comes from television. The remainder comes primarily from the

box office, and it is television and the box office that has made it possible for us to operate in the city of Denver.

I feel my prime obligation, realizing all the other obligations I have for the maintenance in the operations in the community——

Senator PASTORE. I am not being critical of you. I repeat again, you have an interest, and you have a perfect right to defend it.

If I were sitting where you are, I would say exactly what you are saying. If you were sitting where I am, maybe, you would look at it my way somewhat, too.

Let us hope we can resolve this thing in a sensible way.

Mr. PHIPPS. I appreciate the opportunity to speak here, sir.

Thank you.

Senator PASTORE. We are happy to have you, and we are fortunate to have you.

I want to assure of that.

At no time, do I want anyone of your gentlemen to feel that you are an unwelcome guest here.

Mr. ROZELLE. Mr. Chairman, our last club representative is Mr. Jim Finks, vice president and general manager of the Minnesota Vikings.

Senator PASTORE. Why didn't you bring the Redskins manager?

Mr. ROZELLE. He is busy in New York in another one of the court cases.

Mr. FINKS. I am not one of the hungry, greedy owners. I am a paid employee.

There has been a great deal of discussion about the economics of the game, and I happen to believe in all the arguments presented here today.

We operate with the second smallest ball park in the National Football League, and next year, it will be the smallest.

So we are very aware of the economics of operating a football club.

Probably the thing that would be of most interest to you, and I am sure to Senators Mondale and Humphrey, and I am sorry they couldn't be here, is the fact that we do have bad weather in Minnesota.

They might be reluctant to mention this, but that is a fact. From the middle of November on, you can virtually be assured that there is going to be freezing or worse, and snow or sleet. This is documented.

A case in point, we have been in the playoffs the last 4 years, which we played three games at home. That was one each year. In one case we had two games. None of the home games which meant the conference championship has ever sold out in Minnesota, yet we have the second smallest ball park in the National Football League.

Senator BEALL. How many seats?

Mr. FINKS. We show 47.9, and we can bring it up to 49.1. We don't have many desirable seats, probably not unlike RFK, as far as viewing football is concerned.

But weather is a factor. When the skies are balmy, we have no problem, because the fans recognize that it is a nice thing to do, it is the thing to do, as Mr. Rooney said.

We have developed a real good bond between our fans and the club, but later in the year, when the weather is tough, people will not go out and sit in freezing rain and snow.

Another point that has made this no-show problem, which we have averaged over 3,000 no-shows for all of our late games, and a point that might be of interest to you, in 1970, we played the San Francisco 49ers, and they won their division and we won ours, and we played a home game in Minnesota. We didn't sell the game out by 1,500 seats and we had an additional 3,000 no-shows due to a television station carrying that game in Mason City, Iowa. The tower is 120 miles from our metropolitan area, but they penetrated within a mile of our ball park. Your hotels and motels and in some cases your private homes are installing these very sophisticated antennas, and encouraging people, "Don't go to the ball game, come to the comforts of our hotel, buy your drinks and have our dinner and don't fight the crowd."

This has hurt us.

I see the same situation happening if the blackout were lifted. We have developed, as I said, a hard core of great fans. In 1969, we were playing the Rams at home in a playoff game. It looked like, at half-time, our team was hopelessly behind. The fans would not let our club quit. When our club came on the field, the second half, the crowd stood up and gave a standing ovation, and our players and coaches today will go back and say the fans share in that victory as much as our players, because they motivated our players.

You asked a question about whether we would experiment on a sell-out game. I was trying to determine how I would answer that.

My answer would be no, in Minnesota, for this reason: late season games that are meaningful, we feel our crowd is very meaningful to us, also. The enthusiasm they have for their home club is great. However, if you wanted to talk about the Green Bay game, which is December 10 in Minnesota, I can assure you that there won't be over 35,000 people at the ball park at the start of the game and probably more importantly, if it were anything less than an exciting game, you won't have 10,000 people there when the game is over, because late in the evening, it gets very cold.

There is another thing I am very fearful of. Even though you might start a game with a full house, if you run into very bad weather, which they also have in Wisconsin, you will run into any place, but particularly in our area, people will say, "Why don't we go home and watch the rest of the game on television?"

I think this would have a drastic effect on the play of the players, because they respond to live audiences. They don't know whether the red light of the television camera is on them or not, but they do know when 49,000 people are cheering them on, or booing them.

I think if you start tampering with the crowds at the ball park, it drastically will affect the play of the players, and ultimately the great game that I am very happy to hear you say you want to preserve and find the formula for.

Very honestly, I don't have a formula, sir, but I feel strongly that we must do everything we can to maintain a sellout situation in all ball parks, not with just bodies, but with live, enthusiastic crowds.

Thank you.

Senator PASTORE. What would you have done if Congress had not granted the exception in 1961?

Mr. FINKS. We certainly wouldn't have had the great sport.

Senator PASTORE. You would have had the privilege to black out anyway you wanted to, because you wouldn't come within the purview of the antitrust laws. The antitrust exemption gave you the advantage to negotiate on a package basis, which is a big break. You have to admit that.

Without that, I think you would have been at a disadvantage.

In Denver, Mr. Phipps says it means 30 percent of his entire gross, what he gets from television rights. That is a lot of money, a great percentage.

I mean, that is the reason why this committee is involved. This is the communications subcommittee, and it is concerned with television, and this subject has become a burning issue.

There is a great deal to be said on either side. The big question here involves the very keystone of the Communications Act of 1934, public service. I wonder sometimes if public service is not being subjugated to the profit motive.

I repeat again, no one wants to do anything to hurt professional football. Many people like it.

We will take all this testimony under consideration. But I would hope very seriously that somehow you gentlemen could get your heads together to see if you can't come up with some amicable solution to this problem. Give it a test, so that we can see what happens. Then we will know instead of speculating that this might happen, or that might happen.

You fellows feel one way and we feel another. Your fears are in one direction, and our concern is in another direction.

If we could only find out for sure just what would happen, I think all of us would be a lot better off.

So I say to you, Mr. Rozelle, if you will, please take that under serious consideration.

Mr. ROZELLE. I would be happy to, Mr. Chairman.

I would like to make one added comment.

The bill that was passed in 1961 did not just benefit team owners and players, in my opinion. That enabled the National Football League, because of its unique structure of scheduling and playing once a week, to give more sports on television than any other sports league. If we had not had that bill, there is no way you would have had the leverage which you referred to that makes it possible for Mr. Phipps, through our contract with the networks, to insist that the networks carry his games all the way back to just Denver, Colo., games from Miami, Buffalo, wherever they play. No other sport gives every road game of its team back.

We also, although we were not legally required to, we had no pressure, but we felt it was in our interest and in the public interest, we bring games into a market when a team is playing at home, two attractive games.

The argument we have, the debate, of course, is which game. It is not a blackout. It is which game should they be permitted to see?

I think that we have given the public, as indicated by the Harris poll, a great deal of television that has pleased them, and I think your legislation in 1961 made this possible, so I would merely like to point out that it is not just the clubs and the players who have profited but I think the public has as well.

Senator PASTORE. I agree with you. That is what we are talking about, to accommodate both sides.

Do you have anyone else?

Mr. ROZELLE. No, and we certainly will consider your comments, Mr. Chairman.

Senator PASTORE. I can't say this too strongly.

First, before I yield to my distinguished colleague, this has been a very illuminating session. We appreciate very much your coming, and I repeat again you are invited here as friends.

We may do something in the long run, but we are still friends.

Senator Beall?

Senator BEALL. Thank you, Mr. Chairman.

I have no questions. I want to second what the chairman has said.

We thank you for coming here. We are all fans. I think professional football remains very strong, and I think that none of us is unaware of the fact that heavy private investment, heavy investment of private capital is in professional football, and none of us want to see anybody not get a proper return on that investment.

But at the same time, I note that when you lifted the ban before, when you previously blacked out all games from the hometown production, when you lifted that, that tended to further increase the popularity of professional football and further develop enthusiasm in the area where the games were going on, and I would think that because anybody who would invest private capital takes the risk and shows some courage, it seems to me that the circumstances now would dictate that you take a risk and do a little experimenting, and see if we can't do something about the situation we have, like here in Washington, where 8,000 or 9,000 people wait for a ticket.

Senator PASTORE. Thank you very much.

We are going to reconvene at a quarter past 2 o'clock.

RECESS

Senator PASTORE. Is Mr. Kennedy here?

You may proceed.

STATEMENT OF WALTER KENNEDY, COMMISSIONER, NATIONAL BASKETBALL ASSOCIATION; ACCOMPANIED BY ROBERT M. KAUFMAN, COUNSEL

Mr. KENNEDY. My name is Walter Kennedy, and I am the Commissioner of the National Basketball Association. I am accompanied by Robert M. Kaufman, Esq., a member of the firm of Proskauer, Rose, Goetz, Mendelsohn, counsel to the National Basketball Association. I am here to give you the views of the National Basketball Association on bills which would in effect prohibit blackouts of certain professional sporting events sold out before game time.

Mr. Chairman, I know there are several others to be heard today, and the morning session was rather lengthy, and in the interests of time, and since I have presented my statement to the committee and to you, I would merely like to read just one very short portion of it, and before I do—

Senator PASTORE. We will have it inserted in the record in its entirety and then you can go ahead and read what parts of it you want.

Mr. KENNEDY. I don't like to introduce a negative note, if I do as the question goes, on what was described this morning by the chairman as a national crisis.

We are the poor relatives of professional sports in contrast to professional football, but we do share some of their concern, and therefore most of our feeling is contained in the statement that I have given, but I would like to say that professional basketball wants as broad a viewing community as possible by its fans, and this will also result in the best expansion of its revenues.

In the long run, if there were no negative impact upon ticket sales from the lifting of a blackout, it would be in the best interests of all concerned that the blackout not exist. The highest revenues would come from the maximum sale of tickets plus maximum television coverage. But even if some events are sold out despite television coverage, this does not mean there would be no loss of ticket sales and revenues in the near future.

There are numerous types of impact on ticket income which the proposed rule would have. These include:

1. The effect on ticket sales to the particular game, when there is no predictability to the potential ticket purchaser whether the game will be blacked out or not. This is likely to result in a delay of purchasing decisions, and if the blackout is lifted at the last moment, deep resentment on the part of those fans who bought tickets in the belief that there would be a blackout.

2. The similar, but potentially greater, effect on the sale of season tickets.

3. The effect on the sale to tickets to other games of the same team during the same season. A basketball team plays on an average of two home games during each week. These generally do not involve sellout situations. But a sellout of the "hot game" is very likely to result in higher attendance at other games which are not sold out based upon the desire of many fans to see the team rather than just the specific game.

All of these effects must be measured and evaluated in the decision whether to black out—not merely whether the one specific game involved has no more available tickets. The impact of unpredictable blackouts will be particularly harsh with respect to the winter season sports—those like basketball and hockey, even though played indoors, will face many of the problems of football.

Mr. Chairman, I would also like to say, away from the prepared statement, that in line with your question this morning of Commissioner Rozelle and the other football representatives, we, too, will certainly do some soul searching and see if there is something that we can do as part of this problem to be of help and advice to the subcommittee in its deliberations.

Senator PASTORE. We appreciate that very, very much. While you are included under the exception in the antitrust laws, your case could not be exactly on all fours. But we will take everything under advisement, and I hope in the meantime something can be worked out so that we can explore this area. This committee is of no inclination to do anything that would injure the sport itself.

But this exposure on television has had a very dramatic effect upon attendance, and it has had a really tremendous effect upon the interest in the game. You would be surprised how many people are attracted to a basketball game only because they happen to see it on television and then they would like to see a real live one.

It works both ways. The chances are the exposure sometimes would be helpful as far as fans go, because it does stimulate activity and interest within the community where the games are being played.

But you have to take a lot of things into account. I would hope that you would give this very, very serious thought. In the meantime the committee will go into this in quite some depth.

Mr. KENNEDY. Thank you, Mr. Chairman.

(The statement follows:)

STATEMENT OF WALTER KENNEDY, COMMISSIONER, NATIONAL BASKETBALL ASSOCIATION

Mr. Chairman, My name is Walter Kennedy, and I am the Commissioner of the National Basketball Association. I am accompanied by Robert M. Kaufman, Esq., a member of the firm of Proskauer Rose Goetz & Mendelsohn, counsel to the National Basketball Association. I am here to give you the views of the National Basketball Association on bills which would in effect prohibit blackouts of certain professional sporting events sold out before game time.

The NBA and its member teams oppose the proposed legislation, which we believe is unfair and which we believe will have a serious financial impact on our member teams. On its face the bill seems to affect only what some may believe to be an arbitrary decision to deprive local fans of television viewing. Actually, it is a frontal attack on a team's ability to sell tickets to its presentations, which is the single most important source of a team's revenues, and thus the lifeblood of professional sports. Furthermore, this legislation is put forward at a time when a double-pronged attack is being made on the right of professional sports to do what every other form of business and entertainment is able to do—to decide whether to sell or not to sell on a selective basis the product which it produces. This attack comes on one side from the cable television interests and on the other side from legislation of this type.

It is a well-established principle of fairness and equity that no business should be forced to give away its product. No other form of entertainment is deprived of the right to make the decision as to whether to sell—professional sports should not be deprived of this right either.

We find it particularly disturbing that a basis for support of this legislation is the allegation that it would cost the teams no money, since the blackout is not prohibited until the game has been sold out. But the question of whether it will cost money must basically be one of business judgment. The supporters of the legislation should not assume that they know better what is good for the professional sports business than do the owners whose investment is at stake. You should assume instead that the owners know their own business and have made the decision to black out because the decision is a necessary one. If Congress proposes to legislate in this area, it cannot hide behind the argument that the proposal will not injure the revenues of the affected teams.

One thing should be clear. Professional basketball wants as broad a viewing opportunity as possible by its fans, and this will also result in the best expansion of its revenues. In the long run, if there were no negative impact upon ticket sales from the lifting of a blackout, it would be in the best interests of all concerned that the blackout not exist. The highest revenues would come from the maximum sale of tickets plus maximum television coverage. But, even if some events are sold out despite television coverage, this does not mean there would be no loss of ticket sales and revenues in the near future. There are numerous types of impact on ticket income which the proposed rule would have. These include:

1. The effect on ticket sales to the particular game, when there is no predictability to the potential ticket purchaser whether the game will be blacked out or not. This is likely to result in a delay of purchasing decisions, and if the blackout is lifted at the last moment, deep resentment on the part of those fans who bought tickets in the belief that there would be a blackout.

2. The similar, but potentially greater effect on the sale of season tickets.

3. The effect on the sale of tickets to other games of the same team during the same season. A basketball team plays on an average of two home games during each week. These generally do not involve sell-out situations. But a sell out of the "hot game" is very likely to result in higher attendance at other games which are not sold out based upon the desire of many fans to see the team rather than just the specific game.

All of these effects must be measured and evaluated in the decision whether to black out—not merely whether the one specific game involved has no more available tickets. The impact of unpredictable blackouts will be particularly harsh with respect to the winter season sports—those like basketball and hockey, even though played indoors, will face many of the problems of football.

This Committee should recognize that under this bill professional sports would probably receive no compensation for the lost ticket revenues and the increased viewership resulting when the blackout is lifted. Because of the way existing television contracts are written and the unpredictable effects of the legislation, no compensation would be received by the teams from the additional telecast revenues which a station might receive, or because of the additional viewers whom a sponsor might reach. In evaluating a possible voluntary lifting of the blackout, the owner would make a judgment as to whether the revenues from televising will compensate for the reduction in ticket sales. In the situation contemplated by the legislation, it is unlikely that any revenues will be received by the owner.

The contract between the National Basketball Association and the American Broadcasting Company illustrates the problems I have mentioned. The contract was negotiated for a three year period for a fixed lump sum payment which is divided equally by all of the teams in the League. When the contract was signed, no one knew exactly which games would be shown during the three year period. Schedules are made up on an annual basis and which games are selected for broadcast depends in great part on the standing of the teams, interest in the game and other factors. As a result, the number of blackouts during the season and the number of viewers subject to blackout are not predictable when the contract is negotiated and the compensation is arrived at. Our contract with ABC maximizes the number of viewers who can see the game and minimizes the possible number of blackouts. On the basis of economic negotiation between the NBA and ABC, the contract provides, for example, that New York and Chicago will not be blacked out more than once per season, Detroit and Milwaukee not more than twice per season, Philadelphia not more than three times, and each other city having a club, not more than five times. It also provides that blackouts during the entire season will not exceed approximately 25. Once the schedule is set, the sponsors, the broadcasters, the television program publishers, and the fans all know where each game will be shown, whether it will be available locally, what audience the sponsor is entitled to and what facilities are required to put the program on the air. The uncertainty which would be created by this legislation would destroy this predictability.

I am not an expert on the operations of the television market, but it seems to me that at the very least this proposal creates the following problems:

1. How do you secure sponsors for a show and what do you charge them when you do not know until the last moment whether the broadcast will take place in a given market? Certainly, you cannot count on getting local sponsors at the last moment for those segments of commercial time which are set aside for local sponsorship.

2. How do you arrange for the preemption or replacement of the other program which had been scheduled for that time spot in the blacked out community, and how does the station meet its commitments to sponsors and creators of these other programs?

3. How do you adjust the price at the last moment to a sponsor who has budgeted a fixed amount for the sponsorship of the particular telecast on that particular date; or conversely, how do you avoid giving him an undeserved windfall at the expense of another business, professional sports?

4. How do you make last minute arrangements for cable and similar facilities to bring the program into the area?

I think that not one of these issues is met by the proposals which have been made.

The proposed legislation also appears to reflect the view that the provisions of Public Law 87-331, the Sports Broadcast Act, have resulted in a windfall to professional sports and have deprived the public of something which was formerly available to it. This is a mistaken impression. The law did not authorize blackouts, because each team has always had the power to sell or not to sell its games for television. What it did was to permit League-wide contracts for the sale of television rights without taking away the existing blackout power, because it was only by having a League-wide contract that you could provide for equal access to television facilities by all teams, rich or poor, first place or last place. It was also the only way in which revenues from television could be shared equally by all teams regardless of whether they appeared on the actual telecast, and the only practical way of security sponsorship for the telecasts of the less successful teams.

To take away the home territory blackout authority which went with the authorization to sell a League package, either by repealing it or by imposing onerous conditions, would seriously injure the ability of professional sports to continue extensive telecasting and of sharing revenues with the poorer teams.

The implications of this proposal go deeply into the economics and existence of professional basketball—the serious financial condition of which has been demonstrated.

If the Committee feels that basketball's business judgment is incorrect on this issue, the appropriate way to deal with this in my opinion would be to instruct an appropriate agency, perhaps the FCC, to undertake a careful statistical analysis of the situation and to permit careful and unemotional consideration of the results of such a study. Professional basketball simply cannot afford the situation in which legislation of this potential financial importance is passed on an experimental wait and see basis.

To act now under the impact of possible reaction to the opening of the new sports seasons or other events—and because of the understandable public desire to get something for nothing, would be a serious miscarriage of justice.

Thank you.

Senator PASTORE. Mr. Carlson.

STATEMENT OF ROBERT CARLSON, PRESIDENT, AMERICAN BASKETBALL ASSOCIATION

MR. CARLSON. My name is Robert Carlson. I have served as commissioner of the American Basketball Association since August 1, 1972.

Prior to that, I was special counsel to the league and counsel to one of the member teams.

I have not had an opportunity to prepare a written statement, and I hope you will bear with my very brief oral statement.

I speak as a poor relation of Commissioner Rozelle, but also from a poorer league and a poorer sport, and our interests are not identical with those of Mr. Rozelle.

I have examined title 15 and on behalf of the ABA and its member teams, I can state that we oppose the bill at least in its present form.

First, while this appears to be a simple matter on its face, it will alter long-standing relationships which have evolved over a long period of time.

It will have an effect on the cable industry, an effect on the over-the-air broadcast industry, as well as an effect on stadium owners and the professional team owners.

I believe these complex interrelationships deserve to be studied in great depth in an analytical, statistical way.

Despite the President's admonition, in other words, I do not believe this bill should be rushed through in haste.

There is no doubt in my mind that the bill will have a financial impact on the teams in our league. While we cannot boast of as many sellouts as the NFL, we can tell of our staggering investment and our staggering losses over the past 5 years. If memory serves me, they aggregate about \$20 million.

A sports team owner has one product to sell, of course, and that is the competition between his team and the teams owned by his partners.

Historically, each sports owner, as in every other business, has had the right to determine how he is going to market his product. Shall the game be televised at all? Where? Will there be a local blackout? Will there be delayed television? What will be the price?

Let me say, our members, having paid the price of admission to the league and having sustained the annual losses they have sustained, feel that they should have the right to determine how to market his own product, and I myself say in spirit and philosophy, I am inclined to agreed with that.

Senator PASTORE. When you say "he," do you mean the combination, or the individual team

Well, if it is the individual team, naturally, they come under the purview of the law.

Now, do you as the head of the league, negotiate for the entire league?

Mr. CARLSON. Yes; I do.

Senator PASTORE. Therefore, you take advantage of the exemption under the antitrust law.

Mr. CARLSON. Yes. I do.

Senator PASTORE. Don't you consider that an advantage?

Mr. CARLSON. Let me say this: It has not been, because we are in our infancy, we have not enjoyed the decade that Commissioner Rozelle has enjoyed. We are looking to the future.

Our television contract with CBS does not in the remotest way compare to the football contract. Mr. Rozelle stole some of my thunder this morning when he gave you some figures about the Nets and the Pacers last year in the playoff games which I would like to reiterate.

There was the sixth and deciding game. The Nets had been grossing about \$100,000 in ticket sales for home games. The deciding game was aired by CBS with no local blackout. The gross to the Nets dropped to \$35,000, a loss of \$65,000.

Now, the league for that game, received \$17,500 in television revenue. The Nets share was \$1,750. Obviously, the Nets would have preferred to not have the game on television at all, or if it were on television, to have a local blackout.

So, this can have severe financial impact, and I suspect will on some of the teams in our league.

I think it is just a truism that when you give away your product, as this bill would have us do, you are bound to lose money. I think advance sales—let me hasten to add that I don't purport to speak as an expert, but I suspect that advance sales would dwindle.

The fan would base the decision on whether to buy or not to buy on the possibility of there being a blackout, and I don't think the full compliment of tickets would get sold in the last 2 days. I think it takes longer than that to sell tickets.

Moreover, I think, and this point was already made, that it will have a substantial effect at least, ultimately, on the sale of season tickets. This would be real damage, at least to the terms in our league. Our owners look to the sale of season tickets as their basic form of financing.

In buying a season ticket, a fan is buying tickets to less attractive games so that he can be sure of seeing the more attractive games, but he believes the attractive games, the fan that is, if he believes they are going to be on TV as a result of this legislation, I think season tickets are going to be harder to sell.

This may occur over a period of time, but I think it will inevitably occur.

Finally, I am not certain that the legislation in the present form, at least, is workable. Televising a game requires advance planning. Sponsors are generally secured well in advance of the game, well in advance of the beginning of a season, and I am not sure that we would be able to secure sponsors without letting them know what prime markets are going to be blacked out and what prime markets aren't going to be blacked out.

I think the TV networks, and they have spoken of this, or will, will have difficulty in preempting scheduled shows, when there is only 48 hours in between as to when a decision has to be made.

When Congress in 1961 authorized each sports league as a league to sell its members television rights, this was a way in which television revenues were shared by the poorer clubs as well as the richer clubs. It was a way of preserving competitive team balance as well as a way of creating extensive television opportunities for the fans of this country.

Congress in its judgment then preserved the blackout power, which had always existed, so as not to injure those teams whose games would not otherwise be televised.

To change the ground rules now, Mr. Chairman, it seems to me, could possibly injure the ability of all sports to continue extensive television telecasting.

In summary, I think this bill deserves a very thorough analysis before it is passed.

Senator PASTORE. Thank you very much, sir.

Mr. CARLSON. Thank you, Mr. Chairman.

Senator PASTORE. Mr. Ruck.

You are most welcome, Mr. Ruck.

STATEMENT OF DON RUCK, VICE PRESIDENT, NATIONAL HOCKEY LEAGUE; ACCOMPANIED BY PHILIP R. HOCHBERG, COUNSEL

Mr. RUCK. Thank you, Mr. Chairman. My name is Don Ruck, I am vice president of the National Hockey League. I am accompanied by our counsel, Mr. Philip Hochberg from Washington.

Mr. Chairman, we are appearing here today at the invitation of this subcommittee to make a statement on your bill, S. 4010. We would also like to address ourselves to comments on S. 4007, Senator Griffin's bill.

Senator Griffin, in introducing S. 4007, has touched on a very vital aspect of all of these hearings: Different sports, with different marketing plans and different distribution, have different problems. To attempt a blanket solution to what may or may not be a problem in one sport may create even worse problems in another sport.

Furthermore, in his statement, the Senator noted that the National Hockey League and the individual club owners have shown some flexibility in the televising of home games. For instance, in two of our Canadian cities—Toronto and Montreal—home games are televised. Moreover, in Boston the Bruins televise virtually all their away and home games.

As Senator Griffin has mentioned, in recent years, the NHL has attempted to experiment with the lifting of network blackouts in the home territory. Approaching the problem of an experimental basis, we obviously have had to exercise some commonsense judgments.

An obvious concern was to protect the gate receipts. And quite obviously there has been on the part of the National Hockey League a greater reluctance to lift blackouts in the cities where we have newer franchises which are not yet at a point in development where we can simply assume that all games are sold out at the box office.

It is a fact that of the 234 home games played last season by the six franchises which joined the NHL in the 1967-68 season, 106 were not sold out, almost half the total.

Conversely, in some of the cities where the franchise is strongly established at the box office and where season ticket sales represent a high percentage of all tickets available to the public, we have done considerable experimenting with lifting blackouts of network telecasts.

We cannot say to you that we have definitive answers as to the impact of lifting the blackouts in competition with the sale of tickets to the "live" performance but we can report, Mr. Chairman, that the results to date have shown a general pattern of loss of gate receipts.

And I should hasten to add that such losses have been incurred in the cities of some of our strongest, oldest franchises. I offer for your consideration a few examples:

(a) Lifting of blackout in Chicago of a Stanley Cup playoff game on April 13, 1968, between the New York Rangers and Chicago Black Hawks resulted in a gate receipt loss of \$9,905.27.

As I cite these, you will recognize we are dealing in small figures, so the figures represent a significant percentage of what the gate might have been, as opposed to an 80,000-seat stadium.

(b) Lifting of blackout in Philadelphia of a Stanley Cup playoff game on April 6, 1969, between St. Louis Blues and Philadelphia Flyers resulted in a gate receipt loss of \$21,149.07.

(c) Lifting of a blackout in Detroit of a regular season game on January 18, 1970, between the Philadelphia Flyers and Detroit Red Wings resulted in a gate receipt loss of \$5,713.80.

Senator PASTORE. Are all these blackouts lifted because the house had been sold out?

Mr. RUCK. Not necessarily.

Senator PASTORE. The bill only applies in cases where there is a sellout.

Mr. RUCK. In most of the games I am referring to, the house would have been sold out.

Senator PASTORE. I noticed in the two Canadian cities you have a blackout lifted. Is that by order of the Canadian Broadcasting Co. or is this a voluntary act on your part?

Mr. RUCK. Voluntary.

Senator PASTORE. Why do you do it in Canada and you don't do it so much in the United States?

Mr. RUCK. I think there, Mr. Chairman, you have a different situation in that in the total structure of professional sports in competition for the entertainment dollar, for the most part hockey is the only show in town in Canada.

There is no NFL. You have Canadian football, but in its attendance, it is nowhere matches NFL. There is no professional basketball, one league or two. There is just no professional basketball.

Senator PASTORE. As a result, you do have a full house, don't you?

Mr. RUCK. Yes; they are sold out. They have been sold out for years. The pitch and fervor of hockey there is just a very uncommon thing.

Senator PASTORE. That is the point I am making. If you get a complete sellout, you get it continuously, even with the blackout being removed, why is the removal of the blackout such a terror? It works in Canada. Why can't it work in the United States?

Why do you say every time you lift the blackout in the United States, you lose money, and yet in Canada it has never happened?

Mr. RUCK. I think our approach here with television since 1968 has been to voluntarily experiment. This we have done. All I can do, which I am doing now, is to report to you that these are the facts.

Senator PASTORE. You can understand my curiosity.

Mr. RUCK. Yes. I think the only answer I could offer to you from the standpoint of the Canadian situation is to reiterate what I said a moment ago, that unless you were living in those markets, if you were a Canadian citizen, only then would you fully understand and appreciate the total involvement of that country in hockey, where during the Stanley Cup playoffs television ratings were fantastic, something never achieved for an event in the United States. It is an uncommon thing.

The kids almost take it to be a national birthright that when you are old enough to get up on your legs, the first thing you do is put on skates. That is the only explanation I can give you. As I travel back and forth, there is no question in my mind that the hockey fever, or the hockey pitch if we can only achieve it down here, I think we would experiment more.

Finally.

(e) Lifting the blackout in Chicago of a Stanley Cup playoff game on April 19, 1970; between the Boston Bruins and Chicago Black Hawks resulted in a gate receipt loss of \$13,660. Other examples have been cited in the National Hockey League's filing in Docket No. 19417 at the Federal Communications Commission; we would be happy to supply a copy of that for the record.

If it is so desired, of course.

The lifting of these blackouts was done for two purposes:

1. To determine if possible exactly what effect at the telecasting of a home game would have on gate revenue, and
2. To help increase television ratings and promote and sell hockey, a sport not indigenous to many sections of the United States.

Based on our actual experience to date, you can readily see that even in some of the strongest hockey cities, there is the very real risk

of loss of gate receipts when the public knows the game will be shown on television.

The lifting of blackouts has provided another experience, which I can assure you is not a pleasant one. We cannot offer to your committee any solutions to the problem, which I will recite, but we do suggest that certain parts of the "public" can react very violently when it feels it has been dealt with in bad faith.

During the Stanley Cup playoffs of 1969, we decided approximately 48 hours before the game, to lift the blackout of a St. Louis at Philadelphia game. The backlash from the fans and the media was something to behold.

The fans who had already purchased tickets to the game besieged the Philadelphia Flyers management with complaints. I report to you, without embellishment, that the Flyer's switchboard was flooded with calls. Fans denounced the team for acting in bad faith—which presumably meant—"Why didn't you tell us the game was being televised before we paid good money for tickets?"

Many now in the media community chastised the Flyers for the act of bad faith. And overall it was not what you would call a pleasant public relations experience.

The Flyers then by agreeing to lift the blackout in Philadelphia as a gesture to the sports fans, ended up being roasted.

And it should also be pointed out, the Flyers management announced that it would make refunds to those fans who wanted their money back. Many fans took advantage of the offer.

Senator PASTORE. Can you document that?

Mr. RUCK. Yes, sir.

Senator PASTORE. I wish you would document that.

Mr. RUCK. I had hoped to, Mr. Chairman, but the shortage of time we have had, I hoped I would have in the mail today some newspaper clippings from the Philadelphia papers.

Senator PASTORE. Will you see that the staff gets them?

Mr. RUCK. Yes; I will be happy to.⁸

Later a member of the Philadelphia Flyers management confided to me that the entire affair was the worst public relations the club had experienced in its brief history.

In serving the best interest of the "public," I raise the question—what indeed is in the best interest of the team's most valuable asset, the fan who pays for the tickets?

Hockey is an emerging sport in this country. It is growing rapidly. Our expansion has been orderly and for the most part well planned. We approach many of our problems with an open mind. We are willing to experiment. And by lifting certain blackouts, in an orderly fashion, we have demonstrated our concern for the mass public interest.

The New York Rangers were the first team in professional sports to offer to the fans telecasts of its home games on cable systems. It was by any standard of measurement a gamble. No one knew what impact the cable carriage of home games would have on attendance. But the Rangers did experiment. And are continuing to experiment.

The Chicago Black Hawks have experimented in another way. The management, for a number of years now, has put some of its home games on closed circuit television.

⁸ At the time the hearings were presented this information was not yet received. When it is, it will be placed in the Committee files.

We do not yet know the results of these experiments. It could be several years before a true pattern forms.

But we do continue to try—and to seek the answers to the question of the responsibility to the mass audience.

In portraying to you the experiments which we have voluntarily conducted, we must also point out that a sports franchise, as any other business, must be viable. Are we concerned about revenue?

Yes; we are to the extent of keeping each franchise healthy. Please bear in mind that the National Hockey League's board of governors has never approved the shifting of a franchise. Of our new franchises, none has yet shown a profit. Several continue to lose substantial sums of money because this sport, new to those markets, has not yet caught on in the way it has in other markets.

We are confident this will happen in all cases, but in the meantime, the fact is we have never shifted a franchise.

Costs continue to escalate in hockey at a spectacular rate. This year alone, the formation of the World Hockey Association has caused the salary expense of some teams to increase 100 percent.

When the league expanded from six to 12 teams in the 1967-68 season, it brought with it substantial increases in salaries and travel expenses. Travel expense for the six original teams has increased by approximately 100 percent.

And as is the case for all businesses, other expense has increased—expense in the areas of fringe benefits, such as pension plans, per diem allowance, insurance, and in the case of professional sports, the money paid for championship playoffs.

Senator PASTORE. Do you mind pausing there for a moment? There is a vote going on, and we will be back, but when we do come back, Mr. Beall will take over the chair for a while.

So, if I am not here, I hope you don't consider it any discourtesy to you. I have several appointments in the office waiting for me.

(Recess.)

Senator BEALL (presiding). Mr. Ruck, we are sorry for the delay.

Mr. RUCK. We left off when we were talking about some of the expenses increases we have had.

To meet these increased expenses, revenue from all possible sources must be considered. Television is one such source, but for hockey the biggest source of all remains the box office. I think you will find room to share hockey's reasonable concern with the impact any legislation regarding television and gate receipts may play in the conduct of our business and a very major obligation to the public—and that of remaining viable and competitive with each other.

Perhaps at this point, I should lay the framework of our basic broadcasting pattern. Member clubs have pooled the right to a certain number of games for sale to a single national network.

The network package does in fact have a certain number of blackouts in it. In other words, let us say the Philadelphia Flyers were playing the Chicago Black Hawks in Philadelphia on Sunday afternoon and that game was the NBC network hockey offering.

In order to comport with the Philadelphia policy of not televising home games, NBC might not be permitted to carry the game in Philadelphia. That admittedly is a blackout. On the other hand, the vast number of games carried are carried pursuant to locally sold packages.

Let us say the Philadelphia Flyers were playing the Detroit Red Wings in Philadelphia and only a Detroit television station was carrying the game.

Under those circumstances Philadelphia is not "blacking out" the game, because the game is not being televised in any areas around Philadelphia. It is in fact merely a refusal to sell.

Our goal, our purpose is to serve those fans in the arena. There are in fact unanswered questions in dealing with the fans. This is no cynical disregard for them. We are concerned that setting a time limit before games will in many cases create much confusion and last minute rush—not necessary to buy tickets—but to be on hand at the ticket window if the deadline passes with no sellout.

Furthermore, we are genuinely concerned with the reaction of fans who purchase tickets and then on occasion discover the game will be telecast.

As with the unkind experience we had in Philadelphia.

Some of the criticism of the blackout in our media is misguided, through a lack of thorough understanding of the question. This kind of criticism tends to cloud the whole issue.

Many of the conclusions are not based upon all the complicated facts of this industry—for the relationship of TV to the sport is indeed a complex one. In my opinion, recent articles which appeared in such publications as Reader's Digest and TV Guide concerning blackout policies showed a lack of appreciation of all the facts that go into making a fair and reasonable TV policy for the general sporting public, for the owner, and for the sports fan who prefers to attend the event personally.

Except for the limited instances where we have not lifted the blackouts on our network telecasts, it is, we believe, incorrect to refer to our team's policies of not selling local games as a blackout.

The very term "blackout" means that there must be a telecast in an area other than the home city while the game is not shown in that home city. In our local packages—generally made up only of away games—it would not be economically feasible to televise in an area outside the home territory of the home city, while refusing to televise in the home city. Absent a national network contract, the marketing dynamics simply do not work that way.

Even the FCC, when it announced an inquiry into a subject within its own jurisdiction—docket No. 19417—in my opinion failed to accurately state what a TV blackout is. I use this example to point out to you gentlemen that this subject is a difficult one and one that has concerned the FCC for some years now.

This leads us directly to the point that what is done here has an interrelationship to the rules and the regulations of the FCC in a number of areas.

The whole thrust of my remarks has been to support a suggestion made by Senator Griffin. In light of the complexity of the issue, perhaps an additional period of controlled experimentation is called for. We have in this report covered the following:

1. Some TV experiments are in fact being conducted;
2. Dollar loss on a lifting of blackouts has been quantified;
3. Some of the public relations problems of backlash bear consideration;

4. Some other distribution modes have been adopted, also in experimentation;
5. Each sport has its own problems of economic viability;
6. Each sport has its own broadcasting patterns;
7. Gain for the television viewer may in fact hurt the game-attending fan, the real backbone of any sports organization;
8. There is confusion as to what may be covered exactly by the term "blackout"; and
9. There is an interrelationship with on-going proceedings at the FCC.

Once again, as Senator Griffin has suggested, oversight on the issue by a Federal body such as the FCC—might provide the answer. Before taking any irrevocable step in legislating, we would suggest Congress might consider the controlled experimentation under the aegis of the FCC.

That Commission—responsible for broadcast-related regulation—could attempt to set standards by which experimentations could proceed, such as we have done.

You would on the one hand, be granting some relief, while on the other, not write standards into law before you have an adequate and factual base.

Three points, however, I would like to cover apart from any decision to authorize independent experimentation.

It was with considerable interest that we read the analysis of the legislation by the Antitrust Division of the Justice Department. At page 7, Mr. Kauper said:

Insofar as the individual member clubs contract for the sale of their own television rights, as they did prior to 1960, amendment of the exemption statute is no consequence.

It is my understanding that the chairman agreed with the Justice Department position. We also agree with that interpretation.

I would like to further call to your attention another problem which I alluded to early in my statement. The legislation as drafted could very well be interpreted in a restrictive sense. As I mentioned before, some of our clubs have a contract to show their home games on cable television. Would this satisfy the provision in the bill so as to preserve the exemption?

In the interest of competition and development of forms of communication, I should think this committee would adopt a broad definition of television. The scope of the legislation should not run only to a station of one network, but should run to any television station, network affiliate or independent, any cable system, or any closed circuit operation.

One further point on interpretation. If the committee passes a bill, I would hope that its structure would give us the right to continue to experiment so that we may find the proper mix to satisfy the interests of the fans who support hockey by buying tickets and those fans who support hockey by watching on television.

Senator BEALL. Thank you, Mr. Ruck. I see that you are doing a kind of experimentation with the televising of your games, both home games and away games though shows an evidence that you are trying to take care of the fans' interests, and we congratulate you for that.

There is a lack of experimentation in some other sports. We are going to provide, then, statistics to substantiate the statement made earlier in your statement about the loss of revenue. You will supply those to the committee, I understand; is that correct?

Mr. RUCK. That would be the six or seven, I believe, that were documented in this report. There are several others in the FCC docket. We can make that available and if you wish, and I believe we also committed to the Philadelphia reaction, and the media reaction.

As soon as I can get my hands on those clippings, I will submit them.

Senator BEALL. How many teams in the league sell out consistently?

Mr. RUCK. The U.S. clubs, approximately four of the 13 are generally categorized as a consistent sellout.

Senator BEALL. How many of those are season ticket sell outs?

Mr. RUCK. None.

Senator BEALL. What is the average percent of season tickets sold by your teams?

Mr. RUCK. The variance there would run from our two west coast teams, Los Angeles and Oakland, whereas it is an entirely new sport, and we are still struggling there to catch on with the public.

There we might go from 800 season tickets sold in one to approximately 2,000 in the other, to the other extreme, which would be the franchises which are over 4 years old, Boston, New York, and Chicago.

The percentage would be very high.

Senator BEALL. Is the percentage high in Boston?

Mr. RUCK. Yes.

Senator BEALL. What would it be, 70 or 80 percent?

Mr. RUCK. I would say upward of 80 percent, maybe even upward of 85.

Senator BEALL. Then are season ticket sales improving around the league year by year?

Mr. RUCK. They have improved in the new franchise areas such as Philadelphia, which has shown a dramatic improvement. St. Louis has shown fine improvement. Minnesota has gone up each year, and Buffalo. They are improving, I think, without any exception to those.

In the cities where they have that high saturation and have had for a number of years, by policy no club sells out all its tickets. It will hold back to its tickets to be put on sale for the general public so that there is a constant turnover.

Senator BEALL. Has attendance been increasing yearly in the league?

Mr. RUCK. Again, looking at it, where it is apples and apples and so on, we can show you a very bright, rosy picture which you would have to offset in your own mind by the fact that we are expanding so rapidly.

We went from 12 to 14. Obviously, we added two more.

Senator BEALL. Taking that into consideration.

Mr. RUCK. Actually, for the established teams, no, it is status quo, because their saturation had been so high anyway. So there is very little room for improvement unless you knock down walls and expand the building.

Senator BEALL. But hockey is becoming more popular?

Mr. RUCK. There is no question about that.

Senator BEALL. And television is responsible for a lot of the increased popularity.

Mr. RUCK. I think in areas of this country—you see, network television income, it is no secret, was shared by an equal share by all teams. Their share was only \$81,000. So it is an insignificant piece of revenue in terms of the total gross from gate receipts.

But to answer your question, in my opinion, there is no question but television has helped us immeasurably, because the network broadcast is getting us into New Orleans, into Miami, into Dallas.

We have seen in 1 year, while our base is very small, our numbers are just not there. They are not comparable to the other sports. But nonetheless, we are reasonably satisfied with the growth, and in places such as Atlanta, which is not hockey country.

The ice you find is in a mint julep, and you will find it in the NHL arena starting a week from Saturday. The ratings have improved, but they are still not very high.

Senator BEALL. Thank you.

Thank you very much.

Mr. RUCK. Thank you, Mr. Chairman.

Senator BEALL. Mr. Rubin?

STATEMENT OF ELLIS S. RUBIN, ATTORNEY, MIAMI BEACH, FLA.

Mr. RUBIN. Thank you. I am proud to be the first plain old football fan.

I have been called by the New York Times the Don Quixote of the football blackout wars. I have been called other things by Mr. Rozelle, who is an old friend of mine and an old adversary.

I have been responsible for filing six lawsuits against the TV blackouts. There is a seventh suit which is now pending in Los Angeles for the upcoming Super Bowl game in January of next year.

I am responsible, I think, for lifting two television blackouts. One was of the Orange Bowl game in Miami, Fla., and the second is Baton Rouge, La., which was originally blacked out from the Super Bowl of this past January, and I journeyed to Louisiana, jogged 85 miles from Baton Rouge to the stadium, where the game was to be played. We caused a lot of excitement.

And the LSU fans erupted when they found out they were going to be blacked out of the Super Bowl game, and CBS announced the week after the run that they had made a mistake, that Baton Rouge was in fact 82 miles from New Orleans instead of 75, and therefore there would be no blackout.

In the year 1953, Judge Grim, the Federal district court judge, pronounced that the TV blackout does in fact constitute a contract in restraint of trade.⁹ Therefore, and thereafter, in 1916, the Congress of the United States gave the NFL the exemption which it now enjoys, and which we claim in debates on the radio with Mr. Rozelle and his men, in court, and so on and so forth, we claim that the NFL has abused the exemption which Congress has given it.

After all, an exemption is supposed to be for the good of the public. It is a public trust, and we feel that we fans are shut out because of this exemption, for the pure profit of the situation, then the NFL is abusing the exemption.

For instance, in the year 1971, 95.2 percent of all the seats available for the National Football League games were sold. Mr. Rozelle came here this morning and said he is not quite satisfied at that.

He doesn't care how many seats are sold. He wants every seat in the stadium to be occupied so that when the cameras pan over the stadium, it can show a full, packed house.

I don't think Congress should guarantee Mr. Rozelle that every seat must be occupied after it has been purchased.

Senator PASTORE (presiding). That argument didn't impress me much. They already have the money for the ticket. They gave the razzmatazz that an empty seat doesn't buy a hotdog. We are not talking about that.

Mr. RUBIN. I can point out two examples, if I have the time, and I don't want to take more time than I have been allotted. I merely want to say that since 1960, according to a Cornell University law review article which is the best I have come across, and I want to refer you to it—

Senator PASTORE. Say that again, please?

Mr. RUBIN. Cornell law review, volume 57, No. 2 of January 1972, "Professional Football Telecasts and the Blackout Privilege," is title of the article.¹⁰

The student who wrote it did a terrific research job and he reports that since 1960, attendance at the NFL regular season games has nearly tripled while their television contract has advanced five times.

In the year 1970, the NFL entered into its present 4-year contract with the television networks at a total value of about \$142 million, and here they come and say to you that they need the blackout of the local game in order to protect the gate.

That is absolutely untrue, and I have been through the experiences to prove it.

The Orange Bowl game was not a sellout during the years that it was blacked out locally. In the year 1970 I started my campaign to lift the blackout of the Orange Bowl game. I think it was the first organized campaign. I purchased ads in the paper, I went around to various municipalities and had them endorse resolutions.

Senator PASTORE. May I ask you a question out of curiosity? What is your interest in this?

Mr. RUBIN. I am a football fan, and I am an attorney. I have taken an oath to uphold the law. I don't know why I have done all these things. It has cost me a lot of money, it has raised heck with my family

⁹ See p. 170.

¹⁰ See p. 184.

life. I have got the enmity of the Miami Herald which calls me a nut and a screwball, because I am fighting the blackout without monetary gain.

I am like the mountain climber. Pete Rozelle told me in the hall one day, "There is no way we are going to go lift the blackouts," and I said, "Mr. Rozelle, I am going to lift the blackouts."

I am privileged to be here today, because to me it is the culmination of 5 years of protesting what is very unfair. When I started the fight against the blackouts, I received mail such as you would never believe.

I brought some examples if you want me to submit them for the record, but I am sure that you have received the same kind of mail.

Senator PASTORE. From whom? The mail we get is from fans who want to see the game.

Mr. RUBIN. Here is a letter from a ship station on at the Key West Naval Station. They had just returned from Vietnam, and they wrote me a letter when I was fighting the Super Bowl blackout that they wished to add their names to the petition.

Senator PASTORE. You mean favorable to your position?

Mr. RUBIN. Yes; favorable to the position that if there are no tickets available and if the game is to be televised all over the world except in the area where the game is played and because the people who own the stadium are punished for being—for living where they do—then there should be no blackout.

These men had just returned from Vietnam and they objected very strenuously going to fight the battle in order to come back and have Mr. Pete Rozelle tell them as a censor, that they can't see the game when everybody in the world can see the game, and they can't buy tickets to it.

One of the things that we uncovered as we went into court—

Senator BEALL. Excuse me. With respect to the question about your undertaking this, I see you are president of the National Committee to Lift the TV Blackout.

Have you been able to generate a committee now?

Mr. RUBIN. Yes. We were active in Miami where I collected 75,000 names on petitions and submitted them to the city council and to Mr. Pete Rozelle. I collected the names by starting—I am a jogger by hobby. I went to West Palm Beach, which was the outer limit of the 75-mile blackout radius and I jogged down U.S. 1. It took me 5 days, and I collected the 75,000 names on the jog to protest the blackout of the Super Bowl.

I then went to New Orleans and I jogged from Baton Rouge to New Orleans to create the publicity that there was a blackout, and that it should be lifted, and they lifted it in Baton Rouge.

I suppose I will have to go out to Los Angeles next month, because the first hearing on our lawsuit is coming up, and we will have to do something to tell them there is a blackout, too.

Senator BEALL. Have you been able to generate financial support through your committee?

Mr. RUBIN. I have not asked for financial support at first. I ran the ads myself. I had a box in the bottom of the ads asking them to sign it if they wanted to see the Orange Bowl game. Then I did the same for the Super Bowl game.

I came up with the idea that I would like to put more ads in more papers, and I asked the people to send in a dollar if they wanted to join the club. I thought about it after people started sending the dollar in, and I started sending the dollars back. I thought it would become a monetary thing that Mr. Rozelle, of course, would of course jump on me for trying to make money out of lifting the blackouts.

After consideration, I mailed back the money that had been sent in. I feel that will have been more effective when I can claim that I am not in this to make money, but I am sincerely in favor of amending or doing away with the exemption that the National Football League has and which they are abusing.

Senator BEALL. This has been at your own expense?

Mr. RUBIN. Yes, sir.

Senator PASTORE. May I ask a question, your being a lawyer, and you have been in this thing rather deeply.

We have heard from the head of the basketball league, both the National and the American, and we have heard from the hockey league. Would you say that there is a difference between them—I am not talking about the legal differences, but about the practical differences.

Mr. RUBIN. I heard it.

Senator PASTORE. In one case, we have only a handful of seats, in comparison with a professional football game where they have 80,000 seating capacity, and where the professional games maybe come over twice a week, and yet hockey may be played every day.

Have you any idea how you could deal with one without dealing with all of them, because the exemption applies to all under the law.

Mr. RUBIN. I believe the bill would apply equally to them, and it would not hurt them, because if they do not have a sellout, they don't have to lift the local blackout.

Senator PASTORE. Their argument was in the basketball playoff they did have a full house.

There is an economic difference between the two, although I don't know whether or not you can make a legal difference for the simple reason that they are all included under the same exemption.

Mr. RUBIN. The four sports; yes.

Senator PASTORE. Your opinion would be that no matter what, unless you repeal the exemption completely, you would have to treat them all under the same conditions insofar as blackouts are concerned?

Mr. RUBIN. I believe so. I believe that is equal protection under the law.

I have also argued this point with Mr. Rozelle in a judge's chambers for 2½ hours one afternoon, in which Mr. Rozelle and his three attorneys were on one side of the table and I was on the other, and the judge was attempting to arbitrate the blackout of the Super Bowl game in Miami, and we went into all of these arguments, and Mr. Rozelle had very cogent arguments, and I thought that I had, and the judge finally threw up his hands and said,

"Look, there are thousands of boys and girls out there who can't buy tickets to the game who worship the football players, who want to see the game on television," and Mr. Rozelle had kindly condescended to start a retecast, or a delayed telecast of the Super Bowl game at midnight.

So the judge said, "Look, Mr. Rozelle, you are going to have your blackout even if you start to televise the game on a delayed basis at halftime, or at 5 o'clock, 1 hour after the game is over, or 6 or 7 o'clock," and the judge went right around the clock, and Mr. Rozelle conferred with his attorneys, and he finally said, "Judge, if you give them 1 minute before midnight, I am losing my position. I can't afford to establish a precedent. If I lift this blackout, it will destroy my blackout privilege and I can't do it."

So the judge went back into court and said, "I am a State court judge, I haven't got jurisdiction over this particular television problem, and I do say, and this was reported all over the country, that the blackout of the championship football game which is not spelled out in the exemption is a violation of the Sherman Antitrust Act." And I asked Mr. Rozelle to voluntarily lift that, and he said he could not.

Whereupon, I came back publicly in open court and I said, "Look, if you lift the blackout and let"—2½ million people were blacked out—they own the stadium, where the game was to be played. It is a municipal stadium. I said, "Look, I have an insurance company that has just called me on the phone. They are willing to put up a bond of \$1½ million to guarantee that you will have a sellout at the gate. We will purchase any unsold seats from this half-million dollar fund. Will you now open up the game to local television? You are protected."

Mr. Rozelle said, "That is a publicity gimmick, and we are not going to entertain any such deal."

So it is really not a monetary problem. They are sold out. The Washington Redskins on a season basis for maybe two or three seasons are sold out.

Now, the Miami Dolphins are hot, they are sold out, and the natives in Miami are getting very restless.

I can assure you that they want to see the Dolphins on home television, which is why I think I have had what limited success I have had an arousing public opinion that it is an unfair and inequitable proposition.

We supported the Dolphins when they had 10,000 people in the stadium, because they were a losing team. We went every Sunday. I am a season ticketholder. I have season tickets every year. I gave away my tickets to the Super Bowl game when Mr. Rozelle would not lift the blackout. I didn't feel that it was fair for me to go to the game when I was fighting for the 2½ million people who couldn't go, so I gave them to the Variety Children's Hospital, who auctioned them off.

Senator PASTORE. What do you think of the argument that was made that where you don't have a complete sellout, let's say, a week before the 48-hour period, everybody is under the impression that there is going to be a blackout, so they buy tickets. Then it just so happens that at the 48th hour, they have sold out the house. The argument is made here that everybody who bought a ticket is angry because he could have seen the game at home on television. You have heard that argument.

Mr. RUBIN. I have heard it, and I reacted against it. I got hold of the most of the ticketholders to the Miami Dolphins when there were 23,000 season ticketholders. I had my office staff make calls and ask them if they would object if the games were televised locally.

They said, "Of course not. We bought our tickets in good faith. It is not the same, viewing it on television as viewing it in the stadium, it is just not the same ball game when you sit at home and see it on television. That is the big difference."

So I submitted this argument, and I went one better.

Senator PASTORE. Did you see anyone looking at a football game on television eating a hotdog?

Mr. RUBIN. I know a lot of people drink beer and eat peanuts. I know bar owners had people who wanted to watch the game in the bar, and they eat hotdogs in the bar.

Senator PASTORE. Do you know why I asked that question?

Mr. RUBIN. No, sir.

Senator PASTORE. Well, this idea that a devoted fan who relishes the opportunity to see a game would stay home if it were on television.

Frankly, I don't subscribe to that rationale. I quite agree with you. The excitement of the game and the privilege of being there is a unique experience.

But, I am asking you these questions because you have gone into this in quite some detail.

Mr. RUBIN. Senator, we are trying to.

Senator PASTORE. The Orange Bowl, that is owned by the county; isn't it?

Mr. RUBIN. The Orange Bowl is a municipal stadium owned by the city of Miami, and it is leased out on a season basis to the Dolphins and to the University of Miami and on special occasions to the Orange Bowl committee for the New Year's night game.

Senator PASTORE. That blackout that you lifted, that wasn't a college game; was it?

Mr. RUBIN. Yes, it was a college game, and let me give that as an example that Mr. Rozelle's theories and his facts just don't wash.

I started to say that the Orange Bowl was not a sellout while it was blacked out locally because of the caliber of the team. That determines a lot, whether there is going to be a sellout, too.

And that is why Tulane and Georgia didn't sell out for Tulane Stadium.

Mr. Rozelle tries to point out that is why there was no sellout, because there was local television.

Senator PASTORE. Would you advocate the removal of a blackout even in a case where there is no sellout?

Mr. RUBIN. It has worried me that the law that you gave, the exemption that you gave the National Football League, doesn't establish any regulatory agency to administer this. The National Football League is left completely to the exercise of its own discretion, which is arbitrary, in our estimation, as to how to regulate its own exemption.

This doesn't hold true with the FPC, for instance, and other Federal exempted bodies.

Senator PASTORE. The blackout situation results from a private contract between the league and the network.

Mr. RUBIN. But the television airwaves are not private.

Senator PASTORE. I know it. I made that point, but you know what I mean as a lawyer.

Insofar as the policing of this is concerned, it would be my impression that first of all the networks would be very pleased if this exclusion were removed.

Mr. RUBIN: I have a letter to that effect.

Senator PASTORE: Second, if that exclusion were removed and if the blackouts were removed, it would open up an advertising market that would be really jumping with life.

Mr. RUBIN: Los Angeles is blacked out for the Super Bowl next January.

Senator PASTORE: You take the District. If that game were allowed to come in, if the Redskin game being played at home were allowed to be shown on television and that advertising market was opened up, I should think that in their negotiations with the networks, they could raise up the ante.

Mr. RUBIN: Yes, sir; absolutely.

Senator PASTORE: Much more so than maybe the couple of hundred tickets that they want to sell.

Mr. RUBIN: Los Angeles is blacking out 10 million people, the second largest TV market in the world, in January. The sponsors are dying. Here are the letters from TWA, for instance, who object to the TV blackout.

Colgate-Palmolive I have a letter from.

Senator PASTORE: Can we have those in the record?

Mr. RUBIN: Yes, I will be glad to give them to you, along with the letter from the boys at the Key West Naval Station.¹¹

Mr. RUBIN: I started to explain the Orange Bowl as proof. There were hardly any sellouts while the game was blacked out locally. As soon as they listed the blackout in 1971 on an experimental basis for 1 year, they had a complete sellout, and they even added seats in the stadium to enlarge the seating capacity, and they had a complete sellout. It was televised locally and everybody was very pleased.

It worked so well that the Orange Bowl committee announced again this year that they are going to televise it locally this year. They are all sold out weeks in advance. That is proof that you give the public a good product, you give them, as you said this morning, the No. 1 sport now, the fans are excited, they have sold their product so well that they blacked out a portion of the audience, they raise all kinds of problems.

I have a letter which I would like to offer to the committee from the Pasadena Tournament of Roses Association, the Rose Bowl game. I wrote to them in March of 1970, "Do you black out?"

This was in anticipation of my fight with the Orange Bowl Committee.

The last paragraph says it has been a sellout for the last 18 years with a seating capacity of 101,000. At no time in its history has the television coverage been blacked out locally. We would be opposed to blackout even if the attraction were not a sellout.

That is signed Max Caldwell, manager of the Pasadena Tournament of Roses Association.

I have a similar letter from the Cotton Bowl Association. They do not black out.

Here is the letter from the Cotton Bowl. The World Series.

¹¹ See p. 115.

Senator PASTORE. Let me say this, the research you have done and the correspondence you have is certainly great in my book.

Mr. RUBIN. I want to thank you for the compliment, and I want to conclude my presentation, because I know I am usurping time.

Senator PASTORE. Go ahead.

Mr. RUBIN. Mr. Rozelle says the public won't buy tickets if they know it is going to be televised.

Eight thousand five hundred bowl tickets were on sale and they were gone in 90 minutes.

If they are afraid of losing sales at the gate, then why do they put two outside games on local television when the local team is playing at home?

They disprove their theory. They said that in the year 1966 they voluntarily decided to bring in outside games for the local fans who were blacked out of their local team when the local team was playing at home. They still have sellouts at the game; don't they?

They have local television of outside games at home that they can see, but if the game is a sellout and the fan can stay home and see two other games, that disproves their theory that they are going to lose tickets at the gate.

The Super Bowl, I guess, is my baby, because I have been involved with that quite a lot. The two visiting teams always write for more tickets than are available.

I put Mr. Kinsell, Mr. Rozelle's assistant, under oath in a lawsuit in Miami. We were asking for a preliminary injunction, in 1971, and if he is here, he can verify this. The judge let me go quite far with him. I was very surprised. I asked Mr. Kinsell, "Are there any tickets still available for the Super Bowl Game?"

He said, "Yes, there are over 10,000 tickets available."

I said, "That is funny, I am trying to buy tickets, and I read there are none available."

He said, "Well, the commissioner's office reserves 10,000 tickets, and we hold those out until we feel it is the proper time to offer them for sale."

He looked at the judge.

I asked him, "Who do you sell them to?"

He looked at the judge and said, "Do I have to answer that?"

The judge did not make him answer it. That is going a little far afield.

Senator PASTORE. Let the record show that 10,000 is too many for Senators.

Mr. RUBIN. Senator, it is really not enough that they blackout Miami when they are playing at home, we are victims of a blackout when the Dolphins were playing in Baltimore, believe it or not.

That is what really got the fans mad last year, and let me tell you what happened briefly.

There was a college game scheduled in the Orange Bowl on a Saturday night. The NFL made a mistake and they scheduled the Dolphins to play in the Orange Bowl Saturday afternoon when the season schedule was made up in advance.

Along comes section 1293 of your exemption saying that there can be no professional television while a college game is being played in that area. So they moved the game from Miami up to Baltimore. They

televised it all over the country except to Miami, where we had to suffer under 1293 because there was a college game there that night.

This is going too far.

So I wrote to the U.S. Department of Justice and I received an answer from Samuel Z. Gordon, under Assistant Attorney General Richard MacLarren.

I asked them, "Isn't there some way you can waive the §1293?"

I got a very nice, courteous, prompt reply, stating that under § 1293 they couldn't do anything, and they said:

You request a waiver of enforcement of the antitrust laws so that the Dolphins-Colts game may be televised in the Miami area. However, the statute does not provide for such a waiver. Neither the Department nor so far as we are aware the FTC is authorized to grant the same.

Accordingly, we regret we cannot aid you in the matter. Of course, you may wish to call the matter to the attention of Congress, which might see fit to amend the statute.

I am asking you to amend the statute, 1293, to provide that a waiver may be executed by the participating colleges which would allow the pro game to be televised if they see fit.

I filed a lawsuit over this one. I subpoenaed in the athletic directors of the colleges involved. They were willing, but the judge said he had no jurisdiction to entertain the suit, so that went by the boards.

If I may, I just wanted to say that the Florida Legislature considered a bill that I offered to one of the legislators similar to what you are considering here. This bill said that if 90 percent of the seats were sold in advance, 72 hours before the game was to be played, then there can be no restriction on the televising or radio broadcasting of that athletic contest.

The Florida Legislature is still pondering that bill.

I am of the humble opinion that 48 hours in advance is rather short notice to the television people, to the teams, to the fans. Having talked to thousands of people about the problem, may I respectfully suggest that for championship games such as the Super Bowl, which is an absolute guaranteed sellout as soon as the site is announced, there should be no blackout of the game, if all of the tickets are sold 1 month before the game is to be played, that will induce sales, not curtail them.

Secondly, if a team playing the regular season is sold out on a season ticket basis, then I can see no justification for a television blackout.

If an individual game is not a sellout 1 week before the game is to be played, then there should be no local television blackout.

Senator PASTORE. In other words, you would stretch the 48 hours to a week?

Mr. RUBIN. Yes, I would.

Senator PASTORE. I asked that question of Mr. Rozelle, whether or not the 48-hour period was bothersome to him, and he kind of thought it was a little short, anyway, but he didn't make any commitment on any other period.

Mr. RUBIN. No; he doesn't want it lifted at all.

Senator PASTORE. Why do you make that suggestion? Forty-eight hours was an arbitrary time that we just chose because we thought that would be enough. Why do you choose the one you choose?

Mr. RUBIN. I think the fans need the time to contemplate it and I think the television networks need the time to schedule it. During the Saturday game of the week, during the last few weeks of the season,

it was decided upon by the networks within a week of the playing of the game, because they had their choice as to which game was going to be a good game or a relevant game or an important game.

ABC is doing the same with the college game of the week this year.

The first few weeks of the schedule, they have their schedule set, but the last few weeks, they are leaving open to see which games are going to be most critical. They gave it a week. I think they know the business better than I do, and if they need a week, I think that a week is very relevant.

There is one more thing that I would like to bring to the attention of the committee.

Senator BEALL. Mr. Rubin, in your prepared statement, you are suggesting that you open up—if 95 percent of the seats are sold on a season basis and 90 percent of the seats are sold on a weekly basis—

Mr. RUBIN. That statement was prepared by an assistant of mine. I cannot clarify it, and I don't want the committee to take the prepared statement, but my remarks, which I have had a long time to think about.

Senator BEALL. Total sales?

Mr. RUBIN. Yes; total sales. The clubs will automatically hold back 5,000 from offering to the public. You heard the hockey man say that, that it is club policy to hold back.

Another thing, who set the 75-mile radius? The National Football League?

Senator PASTORE. No, no; the 75 miles is the distance that was mentioned in that Grimm decision that you talked about. You see, insofar as their contract, it says, "home territory." It could be almost anything.

Mr. RUBIN. That is too much.

Senator PASTORE. It could be 120 miles. As a matter of fact, that is what it is insofar as Scranton is concerned with Philadelphia.

Mr. RUBIN. Key West is 150 miles from the Miami game. That is too much. I think it should be written into the law, of course, you are going to withdraw their exemption, anyway, and we won't have to worry about the mileage. If you wanted to, I think you should consider that there should be a definite radius set when there isn't a sell-out so that everybody would know it is not up to Pete Rozelle who shall see and who shall not see, and as to what kind of a radius.

Senator PASTORE. Let the record show we haven't decided what we are going to do yet. We haven't decided to remove the exemption yet.

Mr. RUBIN. Finally, his biggest argument, and the one I am always faced with, Mr. Rozelle says no one has a constitutional right to see a football game free on television. He is absolutely right.

Conversely, I have a constitutional right not to be discriminated against. When Mr. Rozelle says that 49 States and 64 counties out of 67 counties in Florida can see the Miami Dolphins, but I can't because I live within one of the four counties that he says is restricted, that is unconstitutional in my humble opinion.

Senator PASTORE. Did you ever argue that point up in court?

Mr. RUBIN. Yes. We never got to it, because the judge always said he had no jurisdiction to entertain this. This thing has never been fully litigated. There have been no appellate court decisions on the right to black out at all.

I think there is a serious question there.

Anyway, I want to thank you so much for this opportunity to get it off my chest.

I have been saving this up for 4 years.

Senator PASTORE. Thank you very, very much. You have been a very interesting witness.

Mr. RUBIN. Thank you very much.

Senator PASTORE. Is Mr. Ficker here?

All right, Mr. Ficker, you may proceed.

**STATEMENT OF ROBIN FICKER, PRESIDENT, REDSKIN FAN CLUB,
SILVER SPRING, MD.; ACCOMPANIED BY CONNIE STEPHANS**

Mr. FICKER. Good afternoon, Senator Pastore, and Senator Beall, from my home State of Maryland.

My name is Robin Ficker and I am president of the Redskin Fan Club.

With me is Connie Stephans, the new secretary of our club.

Senator PASTORE. How many people are in your club?

Mr. FICKER. Sir, I am going to mention that right now.

Senator PASTORE. All right, go ahead.

Mr. FICKER. Until a couple of weeks ago our club was a group of about 20 people who went over to Bob Bryan's basement in the Silver Spring-Wheaton area to watch the Washington Redskins games on television.

There are probably many similar groups in the area. Then we found out about all the games that would not be televised this season. We got some petitions for new members and appear here today to voice our support for your bill S. 4010.¹²

We intend to get other members outside RFK Stadium when the Eagles-Skins game is blacked out this coming Sunday. Two Sundays ago when the Cardinals-Skins game was blacked out a radio announcer on WMAL said there were about 10,000 people standing around the stadium outside who did not have tickets.

We have petitions here for you, and also the club members were very appreciative of your effort in introducing the bill in the first place.

We have a Redskin penant, and also a game ball for the way you play the game. Senator Pastore 12, and the 12 Senators sponsoring your bill, and black out nothing, for the number of Redskin games we want blacked out this season.

We commend the purpose of this bill because we know that countless frustrated fans will feel that Congress, at least, is thinking of their constituents' interest.

We took a poll last night. Calling one random name from 68 pages in the phone book, we found 50 people home, of whom 49 were in favor of the bill. Seldom does a political issue come along that is so one-sided. The Washington Evening Star-News reported that on the evening of the Monday night game between Washington and Minnesota recently, a police station which normally gets hundreds of calls each night, received only about a dozen calls. Apparently virtually everyone watches the games, including the crooks.

¹² The petition contained in excess of 200 signatures and is in the committee files.

Senator PASTORE. You are saying if we lift the blackout, we will cut down delinquency?

Mr. FICKER. There is no doubt in my mind, sir.

A lot of people don't think of that.

But we are the only fans testifying at these hearings.

We appear here as ordinary Redskin football fans who can never buy a ticket because all the games are already sold out. If a ticket is available, we must pay as much as \$50 from a scalper. Besides us, there are thousands of people in the area who, with their salary and high ticket prices, couldn't afford to watch the games even if tickets were available unless the games were on TV. These are the poor people who are so often neglected, and who would be the beneficiaries under your bill.

We speak as sports fans who feel that their rights as consumers are not taken care of or even considered by the Redskins owners, the National Football League, the various TV broadcast groups, the FTC and the FCC.

The first three think only of money and the last two seem to be delinquent in their duty as guardians of our public interest as taxpaying citizens.

I understand that the FTC and the FCC will say in the hearings that they will support the bill. Why haven't they come up with this idea before. We don't need just more talk; we need action.

Are we going to be able to see on TV the Redskins-Eagles game which has been blacked out this coming Sunday, or the Redskins-Giants game which has been blacked out on November 12, or the Redskins-Falcons game which has been blacked out on November 20, or the Redskins-Packers games which has been blacked out on November 26, or the Redskins-Bills game which has been blacked out on December 17? We have heard a lot of talk about these games, but we want to see them on TV this year.

Sure, we are told that we see half the games on TV—those away from home. But the home games only the privileged can see.

In the Washington area of millions of people there are only 13,569 holders of Redskins seasons tickets.

Senator BEALL. How many total tickets does that represent?

Mr. FICKER. That represents all the total tickets, Senator Beall?

Mr. Chairman, I am sure you can appreciate the frustration of a fan who cannot see his favorite team in action, particularly during a home game, either in person or on TV.

Is it due to the greed of the Redskins owners and the TV broadcasting interests, the insensitivity of the National Football League and the lackadaisical attitude of our governmental regulatory agencies?

Senator PASTORE. Are you actually saying that all these tickets which are bought as season tickets and bought preseason are bought in blocks?

Mr. FICKER. Yes, sir; and I am going to be getting into that rather thoroughly in just a moment.

Senator PASTORE. All right.

Mr. FICKER. Last year the Washington fans could see five home games on a Baltimore television station. This year a meeting of owners and television people and commissioners decided only three away Redskins games would be shown on Baltimore TV. The fans were not represented in this decision.

Then the owners of the Redskins complained that WMAR was carrying too many Redskins games, according to production manager Mr. Cochran, and now only one home game will be shown on Baltimore TV.

Senator BEALL. Which one?

Mr. FICKER. The Dallas game.

The fans were not allowed to take part in that decision either.

One well-known television broadcaster told me that the radio station WMAL was partly responsible because they would have increased listenership if the games were not televised into Washington. The president of that station, Mr. Thompson, told me that his station had not taken a position in opposition to the televising, but that the Redskins owners would take the "position of WMAL into account."

One of the things that upsets me and my fan club about the TV blackouts of a home game in our area is the fact that the season tickets are fully sold out years in advance.

There is a waiting list of thousands even though only 23 season ticketholders turned down the chance to renew last year.

Another upsetting thing is that there are at least 20 firms and individuals who account for blocks of 100 or more tickets each. What happened to the public interest? John Carmody of the *Washington Post* wrote an interesting article revealing who held the tickets to the Redskins. He told me that the Redskins employee who quickly showed him the computer ticket list one day was fired by the owners for making part of the list public.

I am including the article in my comments and would like to read a few of the interesting points which show a general lack of public access to the games. Note that Pete Rozelle who testified earlier today has 10 season tickets and one owner of the Redskins has over 40.

Now I will read a couple of the interesting points in the article which I have attached to my remarks.

(The article follows:)

[From the Washington Post, Jan. 16, 1972]

EVEN THE WAITING LIST HAS A WAITING LIST

(By John Carmody)

Up to your ears with Super Bowl Sunday, Washington Redskin fans? Well, hang in there. The future starts (again) in just two more weeks.

That's when the Skins will send out their annual invitations to renew season tickets to every one of the current 13,569 regulars, who comprise not only the biggest club in town but easily the most difficult to join.

Last year, only 23 season ticket holders turned down the chance to renew, according to ticket manager William P. Lally. Even the Skins' waiting list (about 3,200 names long) has a waiting list.

It is also one of the hardest clubs to quit. Although Lally admits to perusing the obituary page once in a while, it is firm Redskin policy not to call up survivors to retrieve whatever tickets mom or dad may have left behind. Which is why the late Sen. Gerald P. Nye and many, many more who have passed on are still carried on Redskin season ticket rolls. "The families," says Lally, "always seem to come back for the tickets."

The 13,569 season ticket holders represent 50,576 seats in RFK on any given crazy Sunday afternoon in the fall. As you might expect, any sampling of a club membership that wide ultimately produces few surprises whatsoever.

On the Skins' computerized ticket ledger are politicians. Lots of politicians. And there are taverns and their customers, family groups, lobbyists, small businesses and giant corporations, attorneys, ticket agencies, restaurants and their customers, military brass, hotels, socialites and judges.

Bobby Baker, the former Senate aide who is currently out of town on more pressing business, keeps his hand in with an annual order of 10 tickets.

It is almost easier to tell who doesn't have a Skins ticket. President Nixon for one. The White House says he watches the games on telly from Camp David, where the Baltimore channel comes in clearly. But if the President and the Skins are in town at the same time, Mr. Nixon listens to the game on the radio, just like the rest of us non-ticket stiffs in Blackout City.

In fact, most of the Nixon White House seems to be out of luck, although Donald Rumsfeld has two, and Robert L. Schulz and Bob Finch each have four.

Most of 1972's Democratic presidential hopefuls have apparently been too busy too long ever to stand in a Skins' ticket line, unless you count Sen. Edward M. Kennedy, who's down for two ducats.

J. Edgar Hoover, the FBI director, doesn't have any, although his good friends, Leonard and Robert Viner, the construction moguls, have 61 between them. Come to think of it, says Lally, he can't ever remember seeing Mr. Hoover at a game.

Associate Justice Byron White, who used to be a great football player, doesn't have any. But Justice William O. Douglas, who wasn't, has two. Well, you get the idea.

The National Football League Establishment, on the other hand, does itself well. Redskin president Edward Bennett Williams not only has that owner's box, filled with 19 other celebrities every Sunday, but another 29 tickets besides—and there's not a dog in the collection. Even his end zone tickets are boxes, which is where you can find Ethel Kennedy and some of the family, if she isn't joining Williams in his box that afternoon.

NFL Commissioner Pete Rozelle comes in for 10 tickets. Local attorney William G. Hundley, who picked up some for himself in the 1950's, added more when he was NFL security chief and he has 14 now. NFL Properties, Inc., claims 14, Jerry Wolman, who used to be Establishment when he owned the Philadelphia Eagles, buys six each year.

American Security and Trust Co., which as been serving as principal stockholder of the Skins since 1969 during the George Marshall heirs' stock wrangle, accounts for 17, all bought, Lally insists, before the stewardship began.

Although the Skins computer list of ticket holders is something like the sun—management doesn't like you to look at it very long—a recent squint revealed these impressions of the Stadium sociology.

The Metropolitan Club, which is hard to join, too, buys 38 tickets for its members.

Mayor Walter Washington, as a member of the D.C. Armory Board, gets four tickets, paid for by the Board. Mrs. Polk Guest, of the Guests, has two. John D. Kurtz, a retired policeman, gets 33 every year.

Dr. Glenn T. Seaborg, former AEC chairman, has just moved to California but he's still got four. Former city councilman Joseph Yeldell has 13. President Nixon's friend, former Florida senator George Smathers, keeps two. Quinn Tamm, a top official of the International Association of Chiefs of Police, buys four. U.S. Circuit Judge David Bezelon, on the other hand, has eight.

The Army Times collects 18. And while we are on the subject of printing, the city's second largest industry, the three major newspapers each buy 300 for their circulation departments. Big printers like Mileham & King Co. (151) and Merkle Press (134) apparently know how to influence employees and customers in this highly-competitive field, too.

Some of the nation's more powerful corporations with offices in town are on the list—North American Rockwell (10), Aerojet General (12), Panhandle Eastern Pipeline (10), Pan American Airways (12), United Air Lines (10), American Airlines (26), General Dynamics (22), and the city's own corporate giant the Marriott Corp., 24.

The huge computer printout starts with the American Automobile Assn. (300 tickets, which AAA distributes through its own travel agency and ends with Burton Zwibel (two).

In between are the big spenders—at least 20 firms and individuals who account for blocks of 100 or more tickets—and customers like Fred Drocula, who only buys one every year and Wayne Roberts of Greenbelt, who has bought two 50-yard line tickets ever since the Redskins moved here from Boston in 1937.

The largest purchaser continues to be the Richmond, Fredericksburg and Potomac Railroad, which has been running packaged trips from Richmond for 15

years now. They buy 600. The Talbert Ticket Agency in the Washington Hotel accounts for 300, as does the Shoreham Hotel (the Shoreham's president, Bernard Bralove, has eight tickets of his own, thank you).

Fran O'Brien's Anthony House Restaurant and Matt Kane's both account for 100 every season. The Trailways Bus system takes care of 275 and the fellows at the Bureau of Ships buy 117. (These large ticket packages, incidentally, are not trusted to the mails, according to Lally.)

Among the big purchasers is Dick and Gary's Restaurant in Hyattsville, with 209 each season. Manager Joe Lasko charges \$75 for a season package which includes bus transportation from the restaurant. "Most of our customers have been with us for eight, nine years now," says Lasko. "We like them to stop after the games and spend something with us." Dick and Gary's crowd supply some of those colorful homemade banners you see every Sunday and this year one of their better efforts was immortalized in the Skins official program.

A more institutionalized effort takes place of course, at IBM in Arlington. There, 2,000 employees belonging to the "Greater Washington IBM Club" take part in a weekly lottery for 200 tickets. Winners of a 2-ticket package are not allowed to repeat during a season so the 200 tickets, during the seven game season, are spread among 700 different employers.

(While we're on the subject of ticket distribution, the Redskins are still facing a class action suit filed in U.S. District Court here by three area residents last fall. It asks that tickets be sold on a first-come, first-served basis, charging that thousands of season tickets to the games are controlled by business firms that use blocks of tickets for promotional purposes.)

On the other hand, an awful lot of the tickets are held by politicians and nobody's ever accused them of promoting anything, have they?

Although the total list reads like a quorum call you can find besides Sen. Kennedy, the Senators Harrison Williams, Alan Cranston, Frank Church, Mike Gravel, Philip A. Hart, Daniel K. Inouye, Warren Magnuson, Joseph Montoya, Robert W. Packwood and Edward Brooke.

Members of the House of Representatives include Republicans Larry Winn, Jr., Wendell Wyatt, Lawrence J. Hogan, Wilmer D. Mizell, Joel T. Broyhill (Broyhill Realty is good for 34 ducats), Elford A. Cederberg, Robert J. Corbett and Gilbert Gude.

House Democrats weigh in with Walter Flowers, Robert Giaimo, Kenneth J. Gray, Dante Fascell, Peter Kyros, John J. McMillan, James G. O'Hara, Morris K. Udall, but that doesn't begin to cover the list.

Local businesses have their share, too. Floyd Akers, the Cadillac man, buys 24 every year. Blake Construction Co. is good for 85. Wolf & Cohen insurance agency takes 72. The McLaughlin Co.—they're in insurance, too—buys 50. Eig & McKeever real estate, which owns the Washingtonian motel, takes 28. Allen & Rocks, the Alexandria real estate firm buys 42. Bell Air Compressor Rental Co. is down for 24. And let's not forget Groves Cut Rate Liquor, out in Frederick, Md. with 52.

The Twinbrook Restaurant in Rockville takes 60. Chez Maurice on Ninth St. NW, is in for 53. The Club Anonymous buys 10. The Gold Room, on Bladensburg Rd. NE., takes 42.

The city's upper crust likes football. Besides Mrs. Guest, Webb C. Hayes III accounts for 20 tickets. Aldus Chapin takes three and Mrs. Tyler Abell, 21.

The city's political figures like to be seen, too. Power behind the scenes D. F. Antonelli, the parking lot king, takes 10. Sterling Tucker buys 41. City Council president Gilbert Hahn purchases a few. Milton Kronheim Sr.—who attends most every game—takes 35 for his liquor distributorship. Special assistant U.S. Attorney Luke Moore has 10.

The Pentagon roll call includes Gen. Lyman L. Lemnitzer, Vice Adm. Emory S. Land (ret.), Gen. I. Sewell Morris, Marine Gen. R. D. Bohn and Adm. C. D. Griffin.

"The military," says Bill Lally, "usually started buying their tickets when they were on a tour of the Pentagon as young officers. Some of them fly in from Europe now when a big game is due."

Redskin Executive Ass't David Slattery said this week that club management "hasn't discussed yet" the question of raising current ticket prices. He did not dismiss the idea.

Presently, a season ticket holder pays \$7 a game, or \$49 for all seven regular season games in one of the reserved general admission seats. The first nine rows of the upper grandstand, a total of 7,933 seats, goes for \$56. And about 1,700 seats in the mezzanines cost \$84 a season.

The notice to be sent out at the end of this month requires that a \$10 deposit on each ticket be paid by March 15, with the balance due before June 16.

Bill Lally, who himself buys 10 tickets a year, none of them in the mezzanine, says that a common practice among ticket buyers is to make down payment on the allotted share and then contact friends who pay for the extra tickets themselves each year. Since a block of 20 of the least expensive tickets comes to nearly \$1,000, the practice is self-explanatory.

Slattery says that any Redskin plans to increase the present capacity of RFK Stadium to 60,000 must await a change in D.C. Armory Board thinking. The Board controls the Stadium.

According to Slattery, the Board's high rental policies tend to discourage potential attractions, like an Army-Notre Dame football game, which could help build up the estimated \$1 million in funds needed to increase seating, regardless of the Skins' contribution.

Total present capacity of RFK is 53,041. The 2,465 seats not taken by season ticket holders are divided among press, radio and television people. In addition, each Redskins' player is entitled to two weekly tickets and members of the Skins band get two freebies.

Quarterback Sonny Jurgensen buys an additional 12. Former Redskins, like Bobby Mitchell, and Lonnie Sanders, Vince Promuto and Sam Huff also buy theirs.

For the meantime, the Skins' waiting list will remain at 3,200, according to Slattery. Last year, with the addition of end zone seats, an additional 1,008 tickets were added to the permanent rolls. But so many fans applied for tickets, according to Slattery, they have cut off the waiting list at the current figure—with little hope for a turnover in the near future.

Scalping, the resale of a ticket for an exorbitant price, continues to bother the Skins. But Lally insists the practice is something over which the management has almost no control.

"A couple of years ago," says Lally, "we applied some pressure on game days out at the Stadium. It's illegal to sell on government property without a license. We made a few pinches that way. But they got off with a \$5 fine and so we kind of dropped the idea."

Lally insists that scalping usually involves out-of-towners who get blocks of visiting team tickets and resell them. Yet most everyone has heard of the otherwise perfectly respectable citizen who has dipped into his pocket for an extra \$25 when say, the Dallas Cowboys, with maybe a title on the line, have been headed for town. Usually at the office. Or at a favorite bistro.

Since Redskins tickets are so rare, some touching stories have crossed Bill Lally's desk in the 16 years he has been with the Skins. This year, despite the fact that interest in the winning Skins was the highest ever, Lally says there was a drop in such tales.

As usual, there were the court suits—invariably won by the plaintiffs—in which a company sues a longtime employee who walks off with the company's tickets he used to sign for every season when he leaves for another job.

But if no divorcee of two years walked in to claim her angry ex-husband's tickets this year, there was the usual run of tearful adults at the Stadium each Sunday, claiming that "some damned kid" had just snatched their mezzanine ticket out in the parking lot. And there were a lot of 50 yard line tickets being left at the cleaners, as usual.

WHO'S GOT 'EM

Still more Redskins season ticket holders. Exact number of tickets held are not available in all cases:

ADS Corp., Landover, Md.....	80
O. J. Agromonte.....	2
Stephen Alles.....	12
Gene Archer.....	--
Atlantic Masonry.....	24
Cliff Battles.....	--
Bankers Guaranty.....	16
Judge Edward Beard.....	--
Arthur J. (Dutch) Bergman.....	16
Eugene L. Bernard, Esq.....	13
Arthur Bildman.....	14
Jack Blank.....	--

Blue Lines	68
Gen. Joe Blumberg	--
Donald Braunstein	6
David Bready	30
Nathan Burak	41
U.N. Ambassador George Bush	2
Glenn Campbell, SAID, Inc.	32
Richard Castell	13
Gen. Leonard Chapman	--
C. & C. Linen Service, Inc.	62
Joseph A. Clement	19
Jack W. Cooper, Gaithersburg	24
Francis P. Curtin, Rockville	90
Leonard J. Czajkowski, Springfield	45
D. & H. Distributing, Cheverly	50
Donald Dawson	4
Gen. John R. Deane Jr.	--
Robert DeOrsey	--
Helen DeOrsey	--
Wallace Edington Jr.	21
Angelo Ellis, College Park	38
Employee Recreation Association	250
William Fallon, Falls Church	46
First Funding Corp., Arlington	8
Donald R. Fleck, Kensington	51
Fort Hunt Sportsmen Association, Mt. Vernon	50
Frank's Lounge	50
Jules Freeman	40
Frito Lay Co.	16
General Telephone & Electric	22
Jim Gibbons	22
Michael Doud Gill	4
Steve Gilmartin	2
Mike Goracoff, Baltimore	15
Bob Goralsky	4
Katherine Graham	6
Graphic Arts Press	18
Harlan, Inc., Arlington	10
Scott Heuer Jr.	4
Chris Heurich Jr.	5
Vernone W. Holleman Jr.	32
Hughes Computer System	22
Hughes Aircraft	8
Ernest Johnston	69
Francis J. Kane	52
Tom Kelly, Tacoma Park	40
Charles K. Koones III	26
John Koons, Jr.	--
Stanley Korman	33
John Krisko, Bethesda	14
Lamp Post Inn, Suitland	96
L. E. Layman, Harrisonburg, Va.	28
John C. Lee, Alexandria	41
Donald Leteratti, Jr.	20
Dr. Leon Levitsky	39
Sheldon and Samuel Magazine	10
Martin F. Malarkey	6
Russell Marriott	7
Martin-Marietta Corp.	20
McArdle Printing	10
McCall Printing	20
Ramon McGill	30
Minnesota Mining	48
W. Jarvis Moody	4
Gov. Arch Moore (West Virginia)	6

John F. Morrissey	66
Buell Myton	26
National Commander, American Legion	16
National Association of Letter Carriers	4
Naval Security Section, Special Services	60
Albert S. Nemir	12
Newbold Noyes	--
Senator Claiborne Pell	--
Forbrochil Redskin Fan Club, Forestville, Md.	28
Shirley Povich	--
Raver's Loyal Fan Club, Germantown, Md.	--
Remington Rand	43
Judge Roger Robb	--
Warren Rogers	4
Al Ross	--
Randolph D. Rouse	--
Carl T. Rowan	--
St. Mary's Redskin Club, Leonardtown	99
Bob Serling	2
Jim Simpson	--
Representative B. F. Sisk	9
Senator John Stennis	--
John W. Sweeterman	--
Senator Stuart Symington	--
Judge Edward A. Tamm	--
Senator Strom Thurmond	--
Tantallon Country Club	69
Tenneco, Inc.	29
Joe Tereshinski	20
Jack Tribble	46
J. Mark Trice	2
Ethan Allen Turshen, Alexandria	12
United Givers Fund	25
Fred Vinson	--
Martin R. West, Jr.	18
William G. Whyte	--
Charles E. Wilson, Jr.	--
Windsor Park Hotel	200
Warner Wolfe	--
World Abilities Search	5
Joseph M. Zamoiski	--

Mr. FICKER. A local attorney, Mr. Hundley, has 14 tickets. The Metropolitan Club of Washington has 38 tickets. A retired policeman gets 33. Joseph Yeldell gets 13. Judge David Bazelon gets eight. The *Army Times*, 18. The major newspapers each, and this article was written before the News went out of business, and I have not been able to find out what happened to the 300 tickets the *News* got for the circulation department.

I called the Redskins and the *Star*, and they didn't know. But both of the newspapers get 300 tickets for their circulation departments.

Big printers, and they may do printing of programs and so on, I don't know. Like Mileham & King Co., and the Merkle Press gets 151 and 134 respectively.

North American Rockwell gets 10, and so forth.

Senator Pastore, we suggest in the interest of fair play that you amend your bill to say that nobody should get more than two season tickets until everyone who wants two season tickets has them. And if there are more applications than pairs of season tickets, then the selection should be done randomly each year.

Sure, some of the VIP's would complain, but, Senator, the Redskin team would be nothing without the nonpreferred but loyal fans—

tens of thousands who never get tickets but still root for the home team. If we cannot be present at a home game, surely we should be able to see our team on TV.

Senators, we feel that you are thinking of us, the deprived consumers. You will legislate in the public interest for all of us. We ask you, give us back a share of the TV airways which belong to all taxpayers.

We support you on S. 4010. We are the deprived ones, who when all seating is sold out 48 hours before a Redskin home game, would like to have the privilege of seeing our favorites on TV. We look to you, sir, for that privilege, for where else can we go as we are blacked out by all the others.

Thank you.

Senator PASTORE. Thank you very much, Mr. Ficker.

Miss STEPHANS, have you anything to say?

Miss STEPHANS. No, sir. I am satisfied, I am very well pleased.

Senator BEALL. Except that you can't see the game.

Miss STEPHANS. That is correct.

Senator BEALL. Is there a membership fee to the club?

Mr. FICKER. No; we started out as an informal group, but we are starting to get involved in some of the legislative and other processes involved here because we are becoming disheartened by these black-outs. Especially when you have so many people standing around outside the stadium as you did for the Cardinals game, and we have read comments of the Redskins owners and we disagree with them.

If this bill isn't passed, and we hope and pray that it is passed, then we are going to try to take the ball further and exert pressure on the Redskin owners.

We have been thinking along the plans of—along the lines of having a mass meeting in Farragut Square, which is just outside Edward Bennett Williams law offices, because we feel if the owners are granted an exemption, if this is indeed serving the public interest, nobody has told the public about it, you can take a poll, and just get a phone book and call random names, and they will support your bill.

Explain it fairly to them, and they will say "Sure, I support that."

The Redskin fans are being left out in the cold here.

Senator BEALL. My question was whether there was a membership fee. I gather your answer is "No."

Mr. FICKER. That is correct.

Senator PASTORE. Thank you, Mr. Ficker.

We will recess until 10:45 tomorrow morning.

There will be a live quorum at 10:15, just before the start of the hearing.

(Whereupon, at 4:20 p.m., the committee was adjourned, to reconvene at 10:45 a.m., Thursday, October 5, 1972.)

(The following information was referred to on p. 103:)

TRANS WORLD AIRLINES,
New York, N.Y., December 23, 1970.

Mr. JOHN BOWMAN,

President, U.S. Consumers Protective Association, Inc., Miami Beach, Fla.

DEAR MR. BOWMAN: Thank you for bringing to my attention the concern of the 2,500,000 people in the Miami area because the Super Bowl game will not be telecast on January 17 in your area.

As you probably know, the contract which permits television coverage of the Super Bowl contains a clause which specifies that the game will be "blacked out" in the area where it is played. This contract is between the National Football League and the networks. The networks, accordingly, have no choice but to adhere to this legal agreement.

TWA, in turn, simply buys participating commercials in the telecast from the network and, despite repeated requests, has not been able to bring about a change in the contractual arrangements between the network and the National Football League.

We agree that the restriction is unfair since tickets to the Super Bowl are always sold out and telecast of the game would not affect gate receipts.

Please be assured that we at TWA would be delighted to have the game telecast in your area so that the people your organization represents could see it, but we trust that you will recognize the problem we face.

I am taking the liberty of sending copies of this letter both to the network and to the Commissioner of the National Football League to indicate our concern.

Thank you for your comments.

Sincerely,

W. J. SMITH.

COLGATE-PALMOLIVE Co.,
New York, N.Y., January 5, 1971.

Mr. JOHN BOWMAN,
President, U.S. Consumers Protective Association,
Miami Beach, Fla.

DEAR MR. BOWMAN: Attached is a copy of a letter that we sent to Mr. Roselle asking his cooperation in having the blackout of the telecast of the Super Bowl Football Game lifted in Southern Florida.

We sincerely hope he will see fit to lift the blackout and that you and your friends will be able to enjoy the live telecast of the game.

Very truly yours,

GEORGE T. LABODA.

Enclosure.

COLGATE-PALMOLIVE Co.,
New York, N.Y., January 5, 1971.

Mr. PETER ROSELLE,
Commissioner, National Football League,
New York, N.Y.

DEAR MR. ROSELLE: Attached is a copy of a letter sent to us from the United States Consumers Protective Association indicating that, at the request of the National Football League, Southern Florida is blacked out from the live telecast of the Super Bowl Football Game, January 17, 1971.

As a sponsor of this popular sporting event, we would like to have all our friends in Southern Florida see the telecast of the game. However, this matter is beyond our control and we are therefore seeking your help in the matter. We would greatly appreciate anything you can do at this time to have the blackout of the live telecast of the Super Bowl Game lifted to enable the residents of Southern Florida to view the championship game.

Thank you sincerely.

Very truly yours,

GEORGE T. LABODA.

NEW YORK LIFE INSURANCE Co.,
New York, N.Y., December 18, 1970.

Mr. JOHN BOWMAN,
President, U.S. Consumers Protective,
Miami, Fla.

DEAR MR. BOWMAN: Thank you for your call the day before yesterday. As I said, we certainly are in complete accord with your plea to Commissioner Roselle of the National Football League to lift the TV blackout of the Super Bowl game. Since the Super Bowl again is a complete sell out, it seems utterly ridiculous that you and 2½ million others in the Miami area should be deprived of seeing this outstanding sports event on television.

Immediately after talking with you on the telephone, we asked our advertising agency to make the strongest possible representation to Mr. Rozelle that we, as one of the participating advertisers, feel the TV blackout should be lifted.

Sincerely,

F. L. COOPER.

U.S. NAVAL STATION ANNEX,
Key West, Fla.

Mr. ELLIS RUBIN,
Miami Beach, Fla.

DEAR MR. RUBIN: The crew members of the U.S.S. *Calcaterra* homeported at the U.S. Naval Station Annex, Key West, Florida, are in full support of your efforts to get the National Football League, to lift the blackout of the Super Bowl Football game.

We of the U.S.S. *Calcaterra* feel particularly offended by the imposed blackout, because we have just returned from an extended deployment overseas, and therefore had no opportunity, to purchase tickets, and because of our duty status most of us would be unable to attend anyway, and with the game totally sold out anyway, feel that this is penalizing us for being in the Armed Forces.

There are thousands of our fellow servicemen and their families in the Key West area, and elsewhere around the south Florida area, who due to their duty status will be unable to attend the game, and this is unfair to them as well. (Furthermore Key West is a 152 miles away, and still effected due to cable vision, which is another sad story.

As an enclose to this letter we are enclosing the signed petitions of our crew members, there was such a need that we had to reproduce your request from the Sunday Miami Herald locally. We had crew members who have their families in the Key West area use their home addresses to signify that there are more people involved than just the crew member himself.

Please feel free to contact either James A. Montavon, RM1 or Robert W. Groezinger, RD1 on this letter or in any other way we might help you right this injustice to the resident, and military personnel within the south Florida area.

JAMES A. MONTAVON, RM1, USN.
ROBERT W. GROEZINGER, RD1, USN.

PASADENA TOURNAMENT OF ROSES ASSOCIATION,
Pasadena, Calif., March 16, 1970.

Mr. ELLIS S. RUBIN,
Miami Beach, Fla.

DEAR MR. RUBIN: In response to your letter of March 13, may I report that the Rose Bowl (with a seating capacity of 101,385) has been a sell out for the New Year's Day game for the last 18 years. Also at no time in its history has the television coverage been blacked out locally.

The allocation of tickets is rather complicated but roughly the visiting Big Ten school receives approximately 20%, the Tournament of Roses 20% and the balance is allocated to the host, or Pacific 8 school. The authorized public sale is a mere 3500.

As you can surmise, we are opposed to a black out of local television. We would be opposed to it even if the attraction were not a sell out.

Sincerely,

MAX COLWELL, *Manager.*

THE COTTON BOWL CLASSIC,
Dallas, Tex., April 15, 1972.

Mr. ELLIS RUBIN,
Miami Beach, Fla.

DEAR MR. RUBIN: On returning from a European trip I found your request of April 8 concerning ticket distribution and television policies concerning the Cotton Bowl Classic. I regret our delay in getting the information to you.

Our information may be irrelevant at this time, however, as I read in the morning newspaper that the Orange Bowl had decided against a television

blackout for the 1971 game. Nevertheless, I am happy to report that we never have blacked out television in any area.

Approximately 45 per cent of our tickets are allotted to the two participating schools. The remaining 55 per cent is sold by the Association.

Sincerely,

WILBUR EVANS,
Executive Director.

[From the Miami Herald, Saturday, Jan. 8, 1972]

90-MINUTE WONDER

SUPER BOWL TICKETS GO SUPER FAST, FANS SAY

(By James C. Buchanan, Herald Staff Writer)

The Miami Dolphins, embarrassed earlier by its ticket sale bottleneck for a conference championship, aroused new criticism from fans Friday because Super Bowl tickets sold so fast—8,500 within 90 minutes.

Emptyhanded fans disputed Dolphins ticket manager Charles Gesino's claim that that many tickets had been sold at 13 Orange Bowl windows.

Dolphin ticket sellers turned away an estimated 1,800 patrons. Forty unsatisfied customers staged a chaotic but harmless demonstration in downtown Dolphins' offices before leaving.

Gesino and the Dolphins' publicity director, Earl Truax, both later said that 8,500 tickets had been sold to season ticket holders after the windows opened at 8 a.m. Dolphin insiders (team members, coaches and their families) received another 1,500 tickets from the National Football League allocation.

Gesino said clerks at each of 13 windows received 600 tickets. Five windows closed in 30 minutes, which meant an average sale of 20 tickets a minute. Eight others were open from 8 a.m. to 9:25 a.m.

Each season ticket holder had been permitted to buy as many tickets to the Jan. 16 contest between the Dolphins and the Dallas Cowboys as he held Dolphin season tickets, up to four.

Gesino could not be reached Friday night for clarification about the ticket situation.

The Dolphins' managing partner, Joe Robbie also could not be reached. His unlisted number was recently changed. His publicity director, Truax said he, too, could reach Robbie only during office hours.

A reporter told Truax, who was called at his home, that he sought comment from Robbie about the ticket sales.

"Well, he doesn't live here," Truax said.

After the ticket windows closed Friday morning, some ticket seekers responded to a cry from someone in the crowd and trekked to the Dolphin's 11th floor office at 330 Biscayne Blvd.

There, 40 staged a sit-in demonstration seeking tickets or at least an explanation—an apology, some said—from Robbie.

Robbie had vanished. He later telephoned "from somewhere in Miami" Truax said, to say he was sorry the crowd in his office could not get tickets for Super Bowl VI in New Orleans.

The disappointed fans, talking with reporters questioned how Bahama Cruise Lines had managed to secure a block of 500 tickets which it offered as part of a \$300-plus boat ride from Miami to New Orleans.

The company's sales vice president, Dick Elterman, said the arrangements had been made in September through a Minneapolis firm hired to operate the cruise by a National Football League subsidiary.

The tickets, he said, "came directly from the league."

Most of the tickets sold Friday were for end zone seats, Dallas Cowboys fans, themselves offered 8,500 tickets two days earlier, also obtained end zone seating.

Some grumbled about the location.

Some, like West Palm Beach lawyer Frank Wethers, didn't care. "End zone? So what . . . I'm in the stadium," he said. Wethers and a party of three, comforted with cots, coolers and chairs, had waited since 9 a.m. Thursday.

"The Miami tickets are scattered all over," Gesino said. He admitted the scattering was all behind the goal posts. "It wasn't our choice. It's just what the League sent us."

BLACKOUT OF SPORTING EVENTS ON TV

THURSDAY, OCTOBER 5, 1972

U.S. SENATE,
COMMITTEE ON COMMERCE,
COMMUNICATIONS SUBCOMMITTEE,
Washington, D.C.

The subcommittee met at 10:45 a.m. in room 5110, New Senate Office Building, Hon. John O. Pastore (chairman of the subcommittee) presiding.

Present: Senators Pastore, Hartke, Cotton, and Beall.

Senator PASTORE. We will resume our hearings. I hope that the witnesses and the spectators won't be surprised if we don't have a full complement of the subcommittee. These are busy days on the floor, and the members are busy coming in and out.

Because of a vote on the floor we postponed this hearing from 10 o'clock to a quarter to 11. I have several statements that I am going to ask to be inserted in the record: one from Senator Bible; one from Senator Spong; we also have a statement from Mayor Joseph Alioto of San Francisco; and the National Broadcasting Co.

Also there is a statement from the Association of Maximum Service Telecasters, Inc.

(The statements follow:)

STATEMENT OF HON. ALAN BIBLE, U.S. SENATOR FROM NEVADA

Mr. Chairman and Members of the Committee: S. 4010—the bill before you today—would remedy a gross injustice now being perpetrated against thousands upon thousands of professional football fans in every National Football League city in the country.

Under its present special exemption from the antitrust laws, the National Football League can and does blackout home territory television coverage of its members' home games. Generally, this means a T.V. blackout within a 75-mile radius of a home team's stadium when it is playing at home.

It makes no difference that the home game is completely sold out long before game time. And, as the Committee is well aware, this is almost universally the case today.

The Washington Redskins is a prime example. Every seat in Kennedy Stadium is committed to season ticket holders long before the season even begins. In Baltimore, all but a few thousand seats are also held by season ticket purchasers, and these are also sold out long before game time. And I am sure that if the Colts decided to fill their entire stadium with season ticket holders, they could easily do so.

The same or similar situations obtain in every one of the National Football League cities. Professional football tickets have become prized possessions. According to some reports, it has even reached the point where they are among the most coveted assets in some decedent's estates.

And they are not coveted only by the male football fan. I understand one of the Washington newspapers recently reported on a domestic relations settlement in which tickets to half the home games were awarded to the husband and the other half to the wife.

Mr. Chairman, the vast and growing popularity of professional football and its relatively limited schedule have brought the National Football League to a time of unparalleled prosperity. Game sellouts have become a virtual certainty. One source reports that last season 97 percent of the seats in all NFL stadiums were sold. And there is no evidence that the fans are cooling off. If anything, the competition among the teams—and among the fans for non-existent seats—is becoming hotter every year.

I have called the television blackout of home games a gross injustice to home town fans. It is more than that. It is also the height of ingratitude to the cities the professional football teams call "home".

Nearly all the teams are based in municipally-owned stadiums, some of which were built either to attract or retain professional football. The public investment in the stadiums themselves and in the parking lots, roads, and other public services needed to provide and maintain such facilities represent untold millions of taxpayer dollars. The National Football League would not be enjoying its present prosperity without this enormous public investment.

Yet tens of thousands of hometown fans and taxpayers cannot purchase a seat in the stadium for love nor money. And, to make matters worse, under the present blackout arrangement they can't even view their teams' home games on television.

I repeat. This is nothing short of crass ingratitude.

I daresay that the National Football League would face an impossible task in attempting to justify the continuation of such hometown blackouts on economic grounds.

The issue presented by this overdue legislation is whether the preference of the professional football league for home game television blackouts should continue to override the desire of thousands of hometown fans to see their home games on television.

In my judgment, the public interest requires prompt action by the Congress to modify the antitrust exemption that permits these home game blackout arrangements.

S. 4010—which I am privileged to cosponsor—would outlaw such arrangements when tickets to a home game are no longer available for purchase by the general public 48 hours before the scheduled game time.

Such a 48-hour rule is a reasonable approach to the problem. The bill may raise some mechanical or technical problems for the broadcasters, and safeguards may have to be included to prevent a team evading the rule by holding a small block of tickets for sale on the day of the game.

I am sure the Committee will be able to address any such problems based on the record being made in these hearings.

The Committee should take this ball and run with it. I urge your prompt and favorable action on this legislation.

STATEMENT OF HON. WILLIAM B. SPONG, JR., U.S. SENATOR FROM VIRGINIA

I am opposed to the blacking out of television coverage of local professional football games. I support the bill introduced by Senator Pastore which would end the anti-trust exemption granted such professional sports by Congress in 1961 unless TV blackouts are lifted when a game is sold out 48 hours before game time. Here in Washington it is virtually impossible to buy a ticket to a Redskins game at any time. Yet the people of the greater Washington metropolitan area, including thousands of Virginians, are barred from seeing on television these games which are so important to them and to which they would buy tickets to see "live" if they were afforded the opportunity. Professional football is adopting a selfish and unreasonable attitude. It may "kill the goose that laid the golden egg" if it does not show more consideration for the people. In Washington, the case is extremely bad for pro football. All games are sold out. Blocks of tickets are owned by many individuals and companies. A great majority of Redskin fans are denied an opportunity to see the home team at home.

OFFICE OF THE MAYOR,
San Francisco, Calif., September 20, 1972.

Hon. JOHN O. PASTORE,
*Subcommittee on Communications, Senate Commerce Committee, U.S. Senate,
 Washington, D.C.*

DEAR SENATOR PASTORE: It has come to my attention that the Federal Communications Commission is presently considering rules governing the way in which cable television systems carry telecasts of professional sports events. The reason for this letter is to express to you my strong hope that any such rules will permit cable systems to carry game telecasts only in ways that are consistent with the television policies and practices followed by the sports leagues, which appear to be very much in the public interest.

My particular concern in this area relates primarily to professional football. As you know, here in the Bay Area, we enjoy not only our long-standing San Francisco 49ers but also the newer Oakland Raiders. With these two clubs playing half their games at home and televising their away games back to their home territory, and with the NFL making one or two other game telecasts available on local television, football fans in the Bay Area are privileged to enjoy a great deal of high quality live and televised professional football every fall. There is, on the one hand, no need for additional professional football games being brought to the area on cable television, and on the other hand, if allowing additional games on the cable would threaten the vitality of the sport, there is every reason to see that cable systems operate in a way that is consistent with the present professional football television distribution patterns.

We can give a powerful example right here in San Francisco. Candlestick Park is owned and operated by a non-profit entity, Stadium, Inc., but the credit of the City of San Francisco stands behind that organization. Recently, a bond issue raised \$26 million for expansion and modernization of Candlestick Park. It is expected, of course, that Stadium, Inc. will service this debt out of income from stadium rental, parking and concessions at Candlestick Park. It would be most unfortunate if other interests were permitted to interfere with this income potential because the result would be to cast upon the taxpayers of San Francisco the burden of picking up the slack in order to service the \$26 million bond issue.

Professional football teams (as well as college football teams) long ago learned that televising a game in the very area in which it is being played can have an extremely deleterious effect upon attendance at that game. Those responsible for making these decisions have generally concluded, therefore, that it is better to forego the added television revenue in order to maximize ticket sales, not only because of the income those sales produced, but also because an important feature of the sport is that it is played before a live audience and not simply staged for television. I am very much in agreement with the philosophy that underlies these decisions. Moreover, from the standpoint of the taxpayers of San Francisco, it is very important that the income potential of Candlestick Park remain at a high level to maximize the possibility that Stadium, Inc. will not have to look to general city or county funds.

For these reasons, I urge that you give your strong support to the adoption of rules which do not permit cable television systems to carry professional sports telecasts around the country inconsistently with the present television practices of the National Football League and the other professional sports.

Sincerely yours,

JOSEPH L. ALIOTO, *Mayor.*

STATEMENT OF NATIONAL BROADCASTING CO., INC.

National Broadcasting Company submits this statement to the Senate Committee on Commerce in connection with its hearing on S. 4010, which would partially eliminate television blackouts of professional sports. This would be accomplished by removing antitrust exemptions for blackout games where tickets for admission are no longer available for purchase by the general public 48 hours before the games are played in their areas.

As a broadcaster, NBC is opposed in principle to blackouts of sports events. The NBC Television Network seeks to provide a diversified national program service, and its goal is to reach as many television homes as possible. Denying service to major markets is in conflict with this goal.

However, in order to obtain rights to telecast some sports, NBC has been obliged to accept blackout conditions imposed by the club owners and their league officers. NBC recognizes conflicting considerations between the claims that blackouts are necessary to protect the box office and the capabilities of television to bring sports to the general public in the area where the games are played.

NBC recommends that, at least as a first step, these conflicting considerations could best be accommodated by removing the antitrust exemption for the major sports events—such as the professional football divisional playoffs, conference championships and Super Bowl games. The concern about protecting ticket sales cannot be a compelling factor in these cases because the demand for seats is typically larger than the supply. And it is the blackout of these games that provokes justifiable public resentment, because it deprives the public of the opportunity to see on television games played in their areas.

This proposal would have the following effect upon the current blackout requirements to which NBC is subjected:

Hockey.—Since there is currently no blackout requirement for the Stanley Cup playoffs, current arrangements recently made with the National Hockey League would not be affected if NBC's proposal were adopted. The arrangements provide that for the regular season the NHL will endeavor to obtain, from all except the newer clubs in the West Division and the expansion franchises, waivers of the right of each member club to preclude local telecasts of its home games. NHL also undertakes to cooperate in working out a schedule which will result in not more than two home area blackouts in a season. The NHL's concern about protecting box office sales during the regular season, especially in the extension franchises, is understandable, and the question of blackouts for these games should continue to be a matter for negotiation between NBC and the NHL, rather than the subject of legislation.

Basketball.—Since NBC has no contract for telecasting professional basketball, it makes no recommendation concerning how the proposed legislation should apply to this sport. NBC's arrangements for the NCAA Basketball Championships will not be affected by the legislation.

Baseball.—There is no current requirement for blackouts of network broadcast of the divisional playoff, the All Star, and the World Series games in professional baseball. With the exception of a few divisional playoffs, this traditionally has been the case. The current arrangements are already consistent with these NBC proposals.

Football.—Professional football has been the most persistent in requiring blackouts, and it is this sport that has borne the most extensive public criticism. The NFL claims that the factors of inclement weather and good faith with the ticket purchasers are especially significant. These arguments are, in NBC's view, less applicable to the divisional playoffs, conference championships, and the Super Bowl games, because the experience of the past three years demonstrates virtually complete sell-outs of the Super Bowl and conference championships, and as often as not sell-outs or near sell-outs of the divisional playoffs.

In the situation just mentioned, the public case against blackouts has the strongest justification. By contrast, the leagues' claims for blackout protection for the changing gate problems of the less successful teams and those in smaller population cities may have some merit, and there is not as sound a basis for prohibiting blackouts in these situations.

Consequently, NBC believes that any prohibition on blackouts should be predicated on the nature of the game and not upon the existence of a sell-out. A 48-hour rule would not materially reduce the risk of unsold seats. Additionally, it would leave the advertisers, the network, the local station, and most importantly, the viewing public in a state of uncertainty and confusion which might perpetuate the problem rather than solve it.

Moreover, it would be difficult to provide workable definitions which would protect against devices such as retention of seats for sale "at the gate" at the last minute; or scheduling events in super-stadia where a sell-out of remote seats would be unlikely in any event.

The distinctions NBC makes with regard to blackout protections as between major and regular season games are based on a sensible balance of the conflicting considerations mentioned above and not on factors of economic self-interest, because NBC elimination of blackouts would not significantly affect revenues from, or cost incurred in, telecasting professional sports.

CONCLUSION

For the foregoing reasons, NBC recommends that the proposed legislative action—the removal of the antitrust exemption—be applied only to certain defined major events, such as the playoffs, conference, league and world championships and all-star games of each of the major professional sports without being expressly dependent upon the sell out nature of each event. Similar legislation for the removal of the exemption for regular season or “non-major” sports events can then be considered after experience has been developed and evaluated on the effects of removing the exemption on the major sports events.

STATEMENT OF LESTER W. LINDOW, EXECUTIVE DIRECTOR, THE ASSOCIATION OF
MAXIMUM SERVICE TELECASTERS, INC.

The Association of Maximum Service Telecasters, Inc. (“MST”) is an association of approximately 150 television broadcast stations, both UHF and VHF, commercial and educational, serving rural areas and small, medium-sized and large communities throughout the country. It is dedicated to the development, improvement and expansion of a nationwide system of free competitive television broadcast services providing maximum service to the public. Underlying these positions has been MST’s faith in the capacity of the nation’s free television systems to meet both now and in the future the public’s changing needs, tastes and interests.

Traditionally, MST has not taken any position on sports blackouts as such. MST still adheres to that position. But, because of its continuing concern for the availability of free television programming to the entire public, MST submits this statement with respect to one important aspect of S. 4010, a bill to amend Section 2 of Public Law 87-331.¹ Specifically, MST urges that if S. 4010 is conditions are met (a sellout 48 hours prior to game time) the game is to appear on local free broadcast television, not some form of pay television or CATV.²

This could be accomplished by adding the following underscored words to S. 4010.

“... but this exemption shall cease to apply with respect to any such game *withheld from local live television broadcast for which no charge to the public is levied* when tickets for admission to such game are no longer available for purchase by the general public forty-eight hours before the scheduled beginning time of such game.”

MST believes that with this additional language S. 4010 would be a more accurate reflection of its sponsors’ intentions.

Regarding the purpose of the bill, Congressman William Randall of Missouri, when he introduced an identical measure in the House on September 27, 1972 (H.R. 16871), explained the measure as follows:

“Yet those unable to buy tickets either because of the cost of a season ticket or because of the unavailability of tickets for individual games should not be denied to see their home team on their *own home television set.*” (Emphasis added).³

Only local free broadcast television, as opposed to other television media (CATV or cable television, closed circuit theatre television, and over-the-air pay television), could accomplish the objective of insuring that *all* the fans unable to purchase tickets to a sold-out home game would have access to the event in their homes. Unlike free broadcast television, CATV is available only to those who live in front of the wire that cable operators install. For many years to come, this will exclude millions of Americans. For the foreseeable future, it will certainly exclude sports fans living in outlying, less densely populated areas where cable is not economically feasible.

Moreover, cable is also beyond the economic reach of millions of lower-income Americans even without separate additional charges for viewing sports events

¹ MST offers no views regarding S. 4007, another bill to amend the same section of Public Law 87-331 but which would go much farther than S. 4010.

² The concern here is with distribution of the game exclusively over CATV, not with CATV carriage of a game through carrying the signal of a local free television station which is broadcasting the game. The latter is appropriate and would not be deferred by MST’s proposal herein.

³ 188 Congressional Record H. 8837 (daily edition Sept. 27, 1972).

via cable. Such added charges, so-called pay-cable originations, would exacerbate the problem. And pay-cable operations, including sports events, are no far-off, speculative problem. In San Diego, for example, pay-cable operations will begin *next month*, and according to the president and chief executive officer of the pay-cable operation in San Diego:

"We have contracts with several motion-picture studios. There will be some sports programs this year. We're negotiating with the Los Angeles Lakers and Kings, San Diego Gulls, San Diego Conquistadors and San Diego Padres."⁴

Earlier this year, this same pay-cable official was quoted as saying:

"The wraps are off—what we're really talking about is pay-TV, here and now, this year. We used to bury it and talk about meter reading and education for the kids and two-way communications, and all the rest," he continued, "but let's face it—we're really talking about the potential of first-run movies and super bowls on a pay basis!"⁵

Congressional concern has frequently been expressed over the threat that sports events that should be available to all of the public free of charge via broadcast television would be lost to CATV or other forms of pay television. For example, during the Hearings before the Senate Appropriations Committee on the Independent Offices and Department of Housing and Urban Development Appropriations Act for Fiscal Year 1971 the following exchange took place between Senator Pastore and the FCC Chairman Burch:

"Senator Pastore Are we providing protection for the person who today is enjoying these programs on a free basis and may lose them in case another vehicle, such as CATV, can go in and pick up the franchise on a closed cable and take it away from the people who are seeing it today free, and give it only to those who pay a monthly fee?"

"Mr. Burch I think the Commission in its subscription-pay-television rules is committed that neither subscription television or cable television will be allowed to replace what we think of as a free television in this country today and by that I mean we are not going to allow the sports programs to be taken over and sold, these sport programs that have been available at this time on a free television. . . ." Hearings on H.R. 17548 before a Subcommittee of the Senate Committee on Appropriations, 91st Cong., 2d sess., pp. 997-98 (1970).

The aspect of S. 4010 that concerns MST involves a somewhat different problem but one which poses the same social issue. If the purpose of S. 4010 is, by Congressional mandate, to provide television access to one type of sports events—sold-out home games not previously broadcast, the question is, what sort of television—free or pay—would accomplish this purpose (assuming S. 4010 becomes law)? The FCC rules referred to by Chairman Burch in the foregoing colloquy deal only with the "siphoning" to pay television of sports events that have *previously* been on free television, not events which would otherwise be on local free television for the first time pursuant to a Congressional mandate. If the Congress decides to provide for television coverage of such events, it should insure that the *entire* public is the beneficiary over local free television broadcast stations.⁶

It is probable that S. 4010 would require a local free television broadcast (as opposed to a pay-TV or cablecast) in the event of a sellout even if the language suggested above by MST was not included in the bill. This becomes clear upon a consideration of the legislative history of Public Law 87-331. The primary purpose of that legislation was to permit individual teams to join together through their league to sell television rights on a "package" basis to one or more networks without running afoul of the antitrust laws. There was never any doubt that under the antitrust laws the team could decide that it would not permit a local broadcast of its home game. Thus Section 2 of

⁴ As quoted in Broadcasting, Oct. 2, 1972, p. 48. A Copy of the complete article is attached.

⁵ Variety, Feb. 2, 1972, p. 34. While no over-the-air pay television station is in operation today, several applications for such operations are pending before the FCC and the FCC's rules now contemplate that over-the-air pay television will be authorized.

⁶ The FCC's rules against so-called "siphoning" not only would be inapplicable in the present context but are in themselves woefully inadequate, particularly with respect to cable TV operations. Although last March the FCC recognized and corrected some of the loopholes in its rule against siphoning of sports events by over-the-air pay television, it left untouched the identical loopholes in the rule relating to cable TV. As matters now stand, for example, events like the Super Bowl could be shifted immediately to exclusive cable television distribution with the only restraint being no separately stated per program charge during the first year of that shift. This is only one illustration of several gaping loopholes in the present FCC rule. The FCC has a rulemaking proceeding pending in which it could and hopefully will close these loopholes, but again that proceeding (FCC Docket 19554) only involves "siphoning" of programs already on free television.

Public Law 87-331 was added to confine the area of the local "blackout" to the so-called home territory because of a Congressional concern that if a broader blackout were permissible, pay-TV might be used for distribution of the game instead of free TV. Section 2 thus removes the antitrust exemption in Section 1 whenever the league's contract with a national television network forbids the network from providing the game to any of its affiliated stations that are located outside the "home territory" of the home team. S. 4010 would remove the antitrust exemption from the league contract with the network whenever the affiliates in the home territory—and they are free television broadcast stations—were prevented from broadcasting a home game that was sold out 48 hours in advance. Depriving such free TV affiliates of the game and distributing it instead by pay cable or other pay television media would therefore not satisfy the requirements of S. 4010.

Nevertheless, MST urges that the suggested additional language ought to be included, if S. 4010 is adopted, so that there could be absolutely no doubt as to Congressional intention in this matter.

Brief comment also seems appropriate regarding the implications of S. 4010 for a pending FCC rule making proceeding in which the policy underlying Public Law 87-331 is being considered. That proceeding (FCC Docket 19417) involves cable TV retransmission of the signals of free broadcast stations outside the areas in which those stations are normally subject to reception. It is possible today, for example, for a CATV system in the Buffalo area to distribute a home game of the Buffalo Bills by importing the distant signal of a television broadcast station in, for example, New York City when that outside station was broadcasting the Bills home game, even though the local Buffalo stations are blacked out from broadcasting that home game. This is clearly inconsistent with Public Law 87-331. Similarly inconsistent would be any cable retransmission of a non-local sports broadcast into an area where reception of the game has not been authorized.

Such cable operations also would not be consistent with the purposes of S. 4010 and indeed would be contrary to those purposes.

For one thing, cable operators engaging in these practices do so wholly without regard to whether or not the game is sold out. Moreover, unlike broadcasters who pay very high compensation for the right to telecast sports events, cable operators simply take sports broadcasts from one city into another without compensating the players, the teams, or the television stations. By thus moving the signals of broadcast stations about, willy-nilly, cable retransmissions present a serious threat to the very survival of weaker teams and to the economic feasibility of free television broadcasts of sports events. Not only is attendance at Buffalo Bills games hurt by CATV importation of distant broadcasts of that and other games, but also it may well become economically unfeasible to continue free broadcasts of the away games of Bills if the games of the stronger New York Jets and other teams are also being distributed to cable subscribers.

For another thing, by importing a distant station's broadcast into the Buffalo area, for example, cable TV does not provide the game to all fans unable to buy tickets, but at most to those who are able and willing to pay for CATV. Many experts estimate that this will not exceed 50 per cent of the population within the next decade. Yet this type of cable operation, while not reaching all of the public, may reach enough people to prevent a sellout of the local game, thereby defeating the obligation that S. 4010 would create to release the game for a local free television broadcast to all of the public.

[From Broadcasting, Oct. 2, 1972]

REAL PAY CABLE ON THE THRESHOLD IN SAN DIEGO

WITH START-UP PLANNED FOR EARLY NEXT MONTH, OPTICAL SYSTEMS REVEALS PLANS FOR "CHANNEL 100": MOVIES, SPORTS, DISPLAY AND FM STEREO ON LOCAL CATV, AND ALL FOR A PRICE

The leased channel—or private channel—concept of pay TV that Los Angeles-based Optical Systems Corp. has been promoting for some two years was formally unveiled last week at a news conference in San Diego. A promise was made then that the system, designed as a piggyback service to a cable-TV operation, will be in operation with test signals in the San Diego area by Oct. 15. Marketing to potential customers is expected to start Nov. 1.

"Actual programing will begin the day of the first installation," Geoffrey M. Nathanson, president and chief executive of Optical Systems, told a gathering of some 50 people that included sports-team representatives as well as newsmen. "There will be an actual turn-on date some time after Christmas," Mr. Nathanson also said. "We have contracts with several motion-picture studios. There will be some sports programs this year. We're negotiating with the Los Angeles Lakers and Kings, San Diego Gulls, San Diego Conquistadors and San Diego Padres." (The Lakers and Conquistadors are professional basketball teams, the Kings and Gulls professional hockey teams and the Padres a major-league baseball club.)

To conduct its pay-cable project, Optical Systems is leasing a nonstandard channel from Mission Cable TV Inc., which operates a system of 54,000 subscribers in the San Diego area (Broadcasting, Sept. 18). Mission Cable, based in the San Diego suburb of El Cajon, is part of Trans Video Corp., a subsidiary of Cox Cable Communications Inc., Atlanta. The pay-cable operation will be known as Channel 100 and it will also operate out of El Cajon.

According to Mr. Nathanson, the nonstandard leased channel will be converted to a standard channel—channel 13 in San Diego—by a program selector unit manufactured by TRW Inc., Redondo Beach, Calif. Specialized forms of programing—primarily professional sports events blacked out in the local area and motion pictures normally seen only in theaters—will be transmitted as a scrambled signal and then cleared at the subscriber's home by insertion in the program selector of a special card purchased for specific programing or specific blocks of programing.

Initially, Optical Systems will be asking subscribers for a commitment of \$20 as a fully refundable deposit for the terminal unit in the home (referred to by Mr. Nathanson as "hardware insurance") and \$12 for maintenance of equipment for a year. Mission Cable customers who select to become charter subscribers to the pay-cable service will not be asked to pay an installation fee or required to sign up for a minimum amount of specialized programing. Mr. Nathanson indicated, however, that subsequent new customers will be charged \$10 for installation of the terminal unit.

In addition to the specialized entertainment programing, Optical Systems, through Channel 100, will provide an automated 24-hour information display channel offering date, time, local weather conditions, continuous newswire crawl, community calendar items, previews of coming attractions, and possibly instructional courses and sponsored messages and slides. There will be no additional cost for this display channel, designed and manufactured by Telemation Inc., Salt Lake City. The display channel coexists on the same channel as the entertainment programing. It is interspersed with the regular programing throughout the day, shown at those times when there are no pay programs being presented.

Still another service to be offered to pay-cable subscribers is a "Cavox" stereo music system, through Tape-athon Corp., Inglewood, Calif., that makes possible four private channels of uninterrupted and different stereo music programs, each to be tuned in separately. In order to receive the audio signals the subscriber needs a special plug-in device which is leased from Channel 100 at a separate monthly rate. The TV signal and the audio music are separated from each other by a splitter which is installed on the cable TV line. The audio line is hooked to the FM radio with a small decoder that unscrambles the four programs so that each may be tuned in separately.

The first programs to be shown will be motion pictures, it was said. They will be offered at no charge. No specific titles were identified. Mr. Nathanson made it clear that Channel 100 will stop short of showing X-rated movies. R-rated films, however, are likely to be presented. A quarterly mailing to subscribers will list all coming events. "Three months is as far ahead as we'll be able to program," said Mr. Nathanson.

It was learned that Mission Cable will receive about 10% of Channel 100's gross receipts and its leasing fee. Movie producers and sports promoters also will be given a percentage of gross receipts on a negotiable basis.

Channel 100 is prepared to do some sports originations on its own, but in some cases will hope to rely on feeds from telecasts being transmitted outside the local area.

Senator PASTORE. We are privileged to have the Chairman of the FCC before us as a witness. I invite Mr. Dean Burch to read his statement or make any comments he wishes.

**STATEMENT OF HON. DEAN BURCH, CHAIRMAN, FEDERAL
COMMUNICATIONS COMMISSION**

Mr. BURCH. Thank you, Mr. Chairman. It is a privilege to appear today for the FCC to discuss S. 4010 and S. 4007. While both bills are drafted in broader terms than just the one professional sport of football, it appears that their main purpose is to end local television blackouts of NFL home games.

S. 4010 would do so in the event the game is sold out 48 hours in advance. S. 4007 would end all such blackout pursuant to a league agreement, whether the game is sold out or not.

Both bills are amendments to section 1292 of title 15—providing that joint or league agreements for television rights lose their exemption from the antitrust laws, if they prohibit—

* * * televising any games within any area, except within the home territory of a member club * * * on a day when such club is playing a game at home.

At the outset, let me state the Commission's position in the fewest words possible. We are not experts in either the antitrust laws or the business of professional sports. It is our responsibility, however, "to promote the larger and more effective use of radio"—which obviously now means television as well—"in the public interest." This is the clear mandate of the Communications Act, and in line with this mandate, the Commission is vitally interested in its licensees having access to the broadest possible range of programing, and providing such programing to the largest possible public.

Certainly NFL games—wherever they are played—rank high on everybody's hit parade. Thus, the goal of the act would be well served by the enactment of such bills as S. 4010 and S. 4007, and the Commission supports and welcomes this result.

It is up to the Congress, of course, to consider the overall public policy implications of ending home game blackouts, either wholly or in part—implications going to the health of the professional sports involved.

The Commission has no expertise in this area. We have always looked to the Congress for guidance. We do so on this occasion—and will attempt to implement its purposes.

From this fundamental point of departure, I would like to touch briefly on a few background matters.

The Commission is well aware of the fact of sports blackouts. Each new football season brings us a steady stream of complaints that a particular television station is not televising a particular game because of a blackout provision.

Senator PASTORE. That is a very, very important observation, and I was wondering if we could document that. Could that be documented?

Mr. BURCH. In terms of the letters we receive?

Senator PASTORE. In terms of the number of people who address themselves to the FCC on these blackouts. It will give us a better perspective on the problem.⁷

Mr. BURCH. I will get you a rundown on our mail, Senator.

Senator PASTORE. In other words, an inference was made that there was political sensationalism behind these hearings. As I remarked

⁷ See p. 161.

at the time, we did not pull this problem out of thin air. This is a result of complaints being made by the public. That is how this all came about.

Mr. BURCH. I will get you a rundown on our mail. I would point out that the stations themselves probably get more mail than we do.

Senator PASTORE. We will also ask the Broadcasting Association.

Mr. BURCH. All we can do is patiently explain that section 1292 entitles teams to enter into league agreements that preclude the telecasting of their home games within their "home territory."

A good many complainants live beyond the 75-mile "protected" radius of an NFL city—sometimes well beyond. In these situations, we have to explain that "home territory" has been interpreted to include those stations whose signals penetrate to within a radius of 75 miles from the game site, rather than just those stations whose transmitters are located within 75 miles of the home city.

Nor is it only the fans who complain. Last year, one Texas television station requested permission to reduce its power by 90 percent in order to prevent its grade B signal from penetrating the 75-mile barrier around Dallas. The Commission rejected this request as inconsistent with the public interest.

The year before, an Iowa station violated the Commission's rules by operating its transmitter at 80 percent of its authorized power because it was told that, unless it did so, it would be unable to carry the traditionally important Green Bay-Minnesota Vikings game.

As a result of this incident, the Commission issued a public notice warning other stations that severe action would be taken against any repetitions.

The rule involved in this case, Mr. Chairman, is that a station may not willfully lower its power output without previous approval of the Commission, and that is normally reserved for emergencies of some sort, not for this kind of a situation.

The point I am making, Mr. Chairman, is simply that such complaints and such incidents indicate that there are irrationalities to be remedied—and it is in this context that the bills before you should be considered.

There is also the background matter of cable television and sports blackouts. We instituted a rulemaking proceeding in the entire area of cable's sports carriage on February 2, 1972, the same day the Commission adopted its new rules for cable television. Among the voluminous comments we have received, scores of letters have been forwarded by Senators and Congressmen and all of them have, of course, been included in the docket.

In addition, the Commission held oral arguments in July. To focus the proceeding, we proposed a specific rule to deal with section 1292 and requested comment on other possible rules to carry out the purposes of the law as a whole. Under our proposed rule, when a major league football, baseball, basketball, or hockey team is playing at home, and, Senator, there is a phrase left out of the prepared statement here. It should read "a cable system located within the grade B contour of a TV station licensed to the home city of a team," may not carry a professional game of the same sport unless it is available on a local station. In this event, of course, it must be carried.

For example, if the Washington Redskins were playing the New York Giants in RFK Stadium, a cable system in the District of Columbia could not carry the signal of a New York station that was televising the Redskins-Giants game.

Furthermore, the cable system could not import from distant cities any other NFL game that were not being broadcast locally. The thrust of the rule is to carry out the intent of section 1292—to insure that cable systems operate on precisely the same footing as local television stations under the present law.

Senator PASTORE. Is that rule in force now?

Mr. BURCH. Yes; that is section 1292. That is the one you are talking about amending.

Senator PASTORE. In other words, when you get a blackout on free television, cable television is blacked out as well?

Mr. BURCH. No, sir; I am sorry. That rule is not in effect now. That is a proposed rule.

Senator PASTORE. It is a proposed rule. That is the reason why I asked the question. So you could have the situation that if in Washington, D.C., for instance, you have cable television, or service by cable television, that system would carry the signal of a New York television station which was broadcasting a Redskin-Giant game being played in Washington. And if you subscribed to cable in Washington you could see the game whereas someone in Washington depending on free television could not. Is that correct?

Mr. BURCH. That is right, under the absence of any rule, and that is the purpose of our rulemaking procedure.

Senator PASTORE. Would you say, then, that if you resolve this question you would have jurisdiction over CATV in this regard?

Mr. BURCH. Over free television?

No, sir. I think that was decided in *Southwest Cable*, and since one of our functions is determined by the Supreme Court, and is to deal with these two regulated industries—

Senator PASTORE. Doesn't that place the Commission in a rather awkward position? In other words, you are going to deny something to someone only because other people are being denied the same thing?

Mr. BURCH. Well, yes.

Senator PASTORE. Why can't we have the discrimination removed in the other direction? If you are going to give something to somebody, why don't you give it to everybody?

Mr. BURCH. We can't do that because section 1292 is the law of the land.

Senator PASTORE. That is the issue before this subcommittee and the Congress. It is not a matter of taking away, it is a matter of giving.

Mr. BURCH. It goes without saying, Mr. Chairman, that the comments have been varied and at polar opposites. It also goes without saying that, should the Congress adopt one of the amendments now under consideration, our proposed rule would automatically reflect this new situation. We intend to complete the cable rulemaking before the year is out.

One final background matter: As I said before, the bills' main thrust is directed to professional football, all of whose regular season games are televised as part of a total league package.

But section 1292 also includes the sports of professional baseball, basketball, and hockey, and these three sports make much less extensive use of league agreements for televising their games—running as low as 2 or 3 percent of total games played.

In all three sports, most games that are televised at all are shown pursuant to individual team agreements with local or regional broadcasters. The impact of the bills under consideration will almost certainly be very different on professional sports other than football.

To sum up, Mr. Chairman, I can only reiterate what I said at the outset. The Commission's responsibility is "to promote the larger and more effective use" of the electronic media, and the thrust of both S. 4010 and S. 4007 seem to us to be fully consistent with this goal.

Insofar as any impact on the continued health of professional sport is involved, that is a matter for your judgment entirely. This consideration must, of course, be balanced against the desire of the public for the most diverse possible menu of sports programming.

I will try to answer any questions you may have.

Senator PASTORE. Your statement is quite complete. I have no questions. Senator Beall?

Senator BEALL. I have no questions.

I apologize for my being late. I understand that you are saying that you think it is in the public interest to remove the blackout.

Mr. BURCH. Yes, Senator, with the caveat that it is up to the Congress to determine the impact, if any, on the health of the sports involved.

Senator PASTORE. That is a personal opinion, or the opinion of the Commission?

Mr. BURCH. No; that is the opinion of the Commission. As I say, we do not profess to be authorities on the health of sports.

Senator PASTORE. Yes; you said that very clearly.

Thank you very much.

Mr. Kuhn?

We are very happy to have you here this morning. Mr. Kuhn. We have heard a lot about you, and it is a pleasure to have the opportunity to meet you. I understand you have no prepared statement. We are very much interested in anything you have to say on this matter.

You may proceed.

STATEMENT OF BOWIE KUHN, COMMISSIONER OF BASEBALL

Mr. KUHN. Mr. Chairman, I have not prepared a statement, but I do have—I have not prepared a formal statement—but I do have some remarks that I would like to make on the subject of the bills which this committee has been considering.

I particularly have in mind the basketball merger bill insofar as it pertains to broadcasting and other sports.

Senator COTTON. Pardon me for interrupting but will you move the microphone a little nearer to you.

Mr. KUHN. Is that better?

Senator COTTON. Thank you.

Mr. KUHN. S. 4010 and S. 4007 are the bills which I would like to address my remarks to.

I think an important consideration, gentlemen, is the performance which professional sports have made in the broadcasting area, not only as that performance is made under the Sports Broadcasting Act of 1961, but in general. I think it is a relevant consideration.

I would suggest to this committee that the performance of professional sports, and I address myself particularly to baseball, though I am not Q.Q. I am not oblivious to what the other sports do—I suggest that the performance has been a good one.

I have many times said, before committees and elsewhere, that I think that professional sports have provided a cornucopia of plenty to the sports fans of the United States, and this has not been anything but an increasing tendency in professional sports.

I particularly address myself to baseball here, where we estimate that over 300,000 hours of television alone are provided by major league baseball annually. It is a hard figure to put into perspective, but it is an absolutely staggering figure. It is more than any other sport at the professional level, on the air.

If you take that together with the fact that virtually every one of our games is broadcast on the radio, and in most instances over a local network of a number of stations—it could be as many as 100 stations—you get some idea of the enormous amount of air time presented to the public by professional baseball.

Indeed, the problem of this plentitude has been so noble to so many people that in Congress we have had bills proposed to restrict the amount of broadcasting for fear that the impact of one sport on another in this regard may be too severe.

We don't support that legislation, but I think it is indicative of what the real problem is. The real problem is that the competition in the entertainment field, and within that I include sports, is very sharp, in my judgment has a strong natural regulating tendency, and is very apt to produce the best public good without the need for legislation, in my judgment.

In baseball, we have as part of our presentation, not only presented our regular season games in abundance on radio and television, but we have always telecast our World Series completely, and in the city where the game is actually being played.

Senator PASTORE. Why do you do it?

Mr. KUHN. Well, we do it for what we think is a very practical reason, and, Senator, it is one of the reasons why I feel that the marketplace is its own regulator.

In baseball, we have the largest mass audience of any sport. Our fans, and I am thinking now particularly of our fans in the ball park, are not limited to any one economic group, or any one set or age group or any one ethnic group or whatever. It has been true from the beginning that our sport is known as the national pastime, probably more than for any other reason.

You take the Detroit Tigers this year. The Tigers have drawn 1,900,000 people.

Senator CORTON. I don't want to take them. I am disappointed in them.

Mr. KUHN. I would surmise of the 1.9 million people that attended home games of the Tigers this year, including the 54,000 that attended

the night before last, when the Senator's favorite Red Sox went down, bravely, this may represent a million different people coming into that ball park from the great mass audience that we have.

Therefore, we are very concerned that we won't accommodate that mass audience, and that we will not only make our games in the ball park available to them at as reasonable prices as possible, but where we can't accommodate them in the ball park, we will try wherever possible to make our games, our critical games, particularly, available to them on television.

Also, Senator, our experience in doing this has not been really very bad. It has been quite good.

Senator PASTORE. Let me ask you a question, Mr. Kuhn. If you could fill up every baseball stadium for every game in this country, would you be willing to give up a blackout?

Mr. KUHN. I would have to—

Senator PASTORE. The fact is that you are not filling up the stadiums unless you have a very special game.

Mr. KUHN. No; I don't think it is our problem, Senator. I think it really is what I tell you, that it is our effort to appeal to that great mass audience which is very important to us, and we have done that, even where there has been a problem of filling a ball park, which comes back to your point, of course.

In the World Series last year, in the sixth and seventh games, we did not sell all of the seats for those last two games in Baltimore. Indeed, there were about 13,000 empty seats there.

I could give you a lot of mechanical reasons or administrative reasons why that may have happened, but we are troubled by what that means.

We will telecast the World Series this year in the home cities of the two teams, and we would hope to do that in the indefinite future. This is the important thing, as far as we are concerned. We feel that where we have behaved responsibly on our record—

Senator PASTORE. What about the public who make television possible by allowing use of the airwaves?

Mr. KUHN. We think, Senator, that we are the legal owners of our property rights.

Senator PASTORE. No one disputes that, but you are using something that belongs to all of the people of the country in order to make a profit.

We are asking you, since we have given you this exemption under the law, to hand us back a slice when you have a full loaf.

What is so wrong about that?

Yet we get all these fears about what this is going to do and what it isn't going to do.

I heard Mr. Rozelle, and he hemmed and hawed when I asked him, "Why don't you try voluntarily?"

He said, "I will take that under advisement, and we will consider that." But you know, that is just a way of answering a Senator, that is all.

But I am telling you that unless Mr. Rozelle comes up with an answer in a week, this may go on some bill as a floor amendment.

I am telling you frankly that the public is not going to sit back and be greatly impressed with the fears that have been expressed without any definite proof.

Now, I realize the position of baseball, but you have to remember this—it is television that has made baseball very popular. It is television that has made professional football very popular. And it is television that brings a lot of money into your pocket.

All we are saying is that you are taking advantage of the public domain, you are using the medium of television. We say fine. We have been giving you the right to deal in a package form by giving you an exemption under the antitrust laws.

Now, we find that there may be some injustices that are being perpetrated on the public.

Now, frankly, I don't think the situation is as bad in baseball as it is in professional football.

Maybe one of the answers as Dean Burch said today, and as we heard yesterday, is to put baseball, basketball, and hockey in a separate category. I think you have a little bit different situation in these sports.

But I am afraid the purpose of this committee and this legislation is being somewhat misunderstood.

Now, we realize that there are certain fears on the part of the owners of these clubs, and the commissioners of the leagues. We understand all that. We understand that there are some problems involved, and maybe now is not the time to do anything statutorily. But at least we want some cooperation.

We want somebody to say, "Well, all right, the Washington Redskins are sold out; all of our tickets are sold out for all of our games."

What would be wrong for the management of that club to say under these circumstances, "Let's lift the blackout, and see what happens; and if next year we can't sell those season tickets as we did before, we will tell Congress."

We are reasonable people. We are not trying to empty out the stadiums. All we are trying to do is accommodate those fans who stand in line hour after hour even in the rain to buy a ticket, and finally they have to be turned away.

One of the radio stations made the remark that there were 10,000 people outside of the John F. Kennedy Stadium when an important game was being played. There were 10,000 people who wanted to get into the stadium, and couldn't because a ticket was not available. What is wrong with lifting our blackout in those cases?

That is what we are saying.

You hear the fears expressed, "Well, you can't fill up the stadium the next day or the next year." Let's try it, let's see. That is all we are saying. We are trying to be reasonable here. We are all lovers of sports. I am crazy about baseball, and I am crazy about football, like a lot of other American people.

But, the fact still remains, why do you deny the fellow who wants to buy a ticket and can't buy a ticket from seeing it on television? You say it is because you are afraid that if you give him this little crumb, that you might hurt yourself financially.

Well, I say if it hurts you financially, then we will stop it; but let's try it. That is all I said. Let's try it.

I am telling you very frankly, I don't think that Mr. Rozelle was serious when he said he was going to take it under advisement. I think he will take it under advisement, but I think it went in one ear and it will come out the other ear. That is about the size of it.

Mr. KUHN. Senator, what you say points up something that I would like to stress to this committee.

You cannot really deal with the various professional sports as if they were interchangeable. They are really not. They are really very different, one from another.

Our problems are by and large very different problems in many ways. Therefore, I think any effort to view this as a situation where you can throw a blanket over the four of us and get a fair and reasonable result may be a mistaken approach.

Senator PASTORE. Well, we didn't give the antitrust exemption alone to football or baseball, we included the four major sports.

Now, that may be where the trouble is. I agree there is a difference between baseball and football. Certainly there is a difference with basketball, where the capacity is an infinitesimal one compared with 80,000 in one stadium where professional football is being played.

The problem we are up against is the fact that if you deal with one sport you have to deal with all four; and that is the reason why I keep talking about this voluntary business.

Mr. KUHN. If there were to be a modification of the act, and I am not proposing that there should be, I feel that we have behaved reasonably under the act, and while I am not here to defend professional football, basketball or hockey, I think it is fairly obvious that while every game you might want to have seen telecast has not been telecast, that they have presented an enormous amount of telecasting to the American public.

And I think they have tried to behave responsibly.

Speaking for baseball, I think our record is really dramatic in this area, and I would have to say that if you were to consider an amendment, regardless of the fact that the statute itself may be a blanket overall, I don't see how any amendment could fail to recognize the differences between the respective sports and the needs that the respective sports have.

I would just mention several things that I think are important in that respect that you may know:

You take the financial condition of professional baseball as against others. Basketball has a little bit more, as we are, than baseball. Neither sport is a particularly successful sport in terms of profit and loss, nor have they been for a long period of time.

This isn't to say that we may not have clubs who do very well, but on balance, baseball is hardly more than a marginal sport, and never really has been much more than that.

So we have a particular financial problem that has to be recognized. One of our financial difficulties, obviously, stems from the fact that unlike, again, basketball this time and football on the other hand, and largely hockey, we operate through subsidies a minor league system in 150 cities in North America.

And in very important cities in many instances—like Indianapolis and Phoenix, ranging on down to smaller communities, like Greenwood, S.C. This is extremely important entertainment medium in those towns.

This is I say notwithstanding that major league sports on television have had an effect on minor league baseball, but they remain important in those towns.

We have the problem of maintaining these systems.

Senator PASTORE. All you need to do is look at the situation here in Washington—the former Washington Senators baseball club vis-a-vis the Redskins. Even in smaller stadiums, only a small handful of people came to see the baseball games in many instances. Because many of the fans in the District were out-of-town residents, they would go out to see their home team whip the Senators.

With respect to the Redskins, it is a lot different. We find that tickets have been sold not only for this season but for the next season and maybe the season beyond.

It does raise a question; that is the thing that is disturbing us. We know there are some problems involved, and they have to be resolved.

There is no question at all about it; but the Congress of the United States was very amenable, very considerate when it granted the exemption—and I am not criticizing that.

I think it was a good thing to have done.

But as a result of that, the league, acting in a package deal, is in a much better position, more advantageous position, to negotiate with the networks; my argument is this:

Now, if the Washington market was opened up to advertising, if a Redskin game could be shown when that Redskin team is playing at the stadium here with a full house, just imagine what that would mean in the pockets of the club. It would mean more money than they would realize from a few seats that were empty.

I mean, there is a profit even in our suggestion to the clubs.

Mr. KUHN. Senator, again, I am not particularly anxious to address myself to the problem of football, but I would say this on that particular point:

I don't think it is reasonable to assume that the operators in football are economic fools. I think that if the opportunity were there, they would appreciate that that opportunity was there, and then they would accordingly take it.

I think their concern, whether you agree with them or not, and I understand the points that the Senator has made this morning, I think their concern is a reasonable concern, and one that is certainly not in an irrational effort to shove profit away.

I don't think they have a record of trying to do that, any more than we do.

Only our problem is a more acute one, because our financial condition is a very different one from the financial condition of professional football.

Senator PASTORE. I didn't say that. All I am saying is that it isn't completely one-sided; there may be a little bit of an advantage to it, too.

If lifting the blackout when the stadium is sold out does not change the sellout condition, there could be an added profit. That is all I am saying.

Mr. KUHN. Senator, I would like to talk a little bit about what I call the economic regulator factor here.

The entertainment field in the United States today is so big that it is difficult to measure in size. It is in this entertainment field that we

all in professional sports compete, and the competition is not only among professional sports, but it is among other operating factors within the field of entertainment.

It is my belief that whenever a professional sport operates in a way which basically disservices the public interest that the other competitive factors in the entertainment industry will soon pick up the slack of the problem which it has created.

In other words, if we fail to telecast games where there is clearly a legitimate interest in having them and where reason should indicate they should be telecast, I suggest to this committee that we will soon begin to lose our broadcast market in other ways, and that we will soon begin to lose our gate market in other ways, and the other markets that we benefit from.

For instance, if baseball were not to present enough of its games on television with the overlap of the seasons that exists. I suggest that basketball and hockey and football would soon move in and take the opportunity to take the television and radio dollars away from us, because we weren't serving the public interest.

I think this is a regulator factor and a very important one.

I suggest that this will be a continuing factor, and there is in this area another regulator factor, and that is the interest of the networks.

By and large you will find, and I am sure you will hear from the networks here, that they do not necessarily favor blackouts. They would sooner see the games widely telecast, because their primary concern is not with the gate, as our primary concern must be, particularly in baseball where we derive a higher percentage of revenue from gate, probably, than anyone.

It is certainly very high.

The networks with whom we have to deal in selling our joint package rights, as under the Sports Broadcast Act, will very naturally resist any effort not to telecast in the home market.

If we were to go to NBC next year and say for some reason or other we didn't want to telecast the World Series in the home cities of the competing clubs, we would get quite an argument from NBC, and I think NBC would say they have a right under the contract to do it, and that they intend to do it.

This, then, has a regulating effect upon what can be done. These interests are there, too.

They, in a very real sense, are as interested as we are in serving the public. It is a balancing interest. We know the unique problems of our curious little industries, and we do have very unique problems.

They know the unique problems of trying to reach the public through broadcasting, in making contracts with these network organizations, this is a natural compromise that occurs.

I think that serves the public interest and protects the public.

Let me give you a current example from our industry:

This Saturday, we will begin our league championship series to determine our pennant winners in the respective leagues. Pittsburgh is playing Cincinnati.

They will play the first three games out of the five series of games—I hope it will be five—in Pittsburgh. We have never gone beyond three except on one occasion. I hope that is about to change.

They will play in Pittsburgh on Saturday and Sunday. It happens that the network is unable to carry the Pittsburgh game. It will carry the American League game that day between Oakland and Detroit.

Pittsburgh, therefore, under our contract has a right to pick up those television rights and broadcast that game or not as it deems best.

The Pittsburgh club, not one of our biggest markets, has a problem. It never telecasts its home games. It feels it doesn't work in the interests of the Pittsburgh club to do that, or almost never to do it.

Because their advance sale has been quite good for their Sunday game for Cincinnati, they have announced that they are not only going to carry that game over a little regional network, but they are going to carry it over their television station in Pittsburgh.

Now, I think this is the kind of behavior that you can certainly expect from professional baseball. I think it is a manifestation of the regulator effect, and I think it is an indication of a willingness to do what is reasonable both in terms of the public interest and in terms of trying to protect the businesses which also have to operate if we are going to succeed in this highly competitive entertainment field in which we work.

So, I think these are factors that should be considered.

Senator BEALL. Could I ask a question on that point?

What you are saying is that the league has no policy on blackout, that the policy is that so long as it doesn't compete with your league contract with NBC, then the individual teams are at liberty to make their own decisions?

Mr. KUHN. In this particular instance where NBC was unable to carry a game to which it had contract rights; yes. That is not normally the case. That is an unusual situation where that would be so.

Normally, NBC would jump at the opportunity.

Senator BEALL. To carry it one step further, assume it is not a play-off game that has such wide national appeal. Do you have a policy that says to one of your major league teams that they cannot televise locally any of your home games?

Mr. KUHN. No; we do not, and this, again, Senator, is an important distinction between baseball on the one hand and, I would say in this instance, football. We divide our broadcast rights up between the national package, which is administered by my office, and the individual 24 local club packages which are administered by the local clubs.

Senator BEALL. What I gather from your discussion this morning is that here is baseball, a professional sport, and here is football, a professional sport, and you are saying you think it is to the advantage of your sport to develop as much public interest as possible, and therefore you think you are going to develop the public interest by allowing the fans to see the games of their hometown teams at home, not only in full-house situation, but in some non-full-house situations?

Yet football is coming to an entirely different conclusion. They apparently are coming to the conclusion that it is not in the interests of the promotion of their sport to allow fans to see their hometown team play at home, even though their stadium is sold out.

Now, here are the two major sports in the country coming up to entirely different conclusions as to what is good for their sport.

Mr. KUHN. You are absolutely right in what you say, but I would suggest as I have before, that the reason for the different conclusions is the radical difference in operations between the two sports.

What makes good sense for us may not necessarily make good sense for professional football.

Senator PASTORE. In your contract with the networks, you do the negotiating, do you not, Commissioner?

Mr. KUHN. Yes.

Senator PASTORE. You do the negotiating for the entire league with the networks?

Mr. KUHN. Yes.

Senator PASTORE. Do you have a provision in that contract that the local team may dictate the stations that will be blacked out?

Mr. KUHN. No.

Senator PASTORE. In other words, your contract is somewhat different than the contract of the football league?

Mr. KUHN. That is correct.

Senator PASTORE. In other words, you do not have any condition in your contract with reference to blackouts and the privilege to black out?

Mr. KUHN. That is correct.

To give you an example of how it would work in baseball: I will give you an actual example, again from Pittsburgh, last year. If we wanted to avoid local telecasts of one of our main events, the all-star game, the league championship games, and so forth, for some reason we would have to go to NBC and say, "We feel in this instance that television locally will not be a good thing. It may very seriously affect the game."

We did that last year in Pittsburgh when the league championship series was played in Pittsburgh on Monday, Tuesday and Wednesday, a very different drawing proposition from Saturday and Sunday.

So we went to the network and said, "We would like not to carry it in Pittsburgh on Monday and Tuesday," which isn't to say we weren't telecasting in Pittsburgh, because we telecast the American League championship game, and we worked that arrangement, by agreement with NBC, whereby we did not carry it, and in the judgment of the Pittsburgh club, it substantially increased the attendance at those two games.

We have a problem, largely because of our broadcast probably, because we do telecast our league championship games, and by and large, we do not sell out the league championship games.

Senator PASTORE. With whom did you negotiate, CBS, ABC, or NBC?

Mr. KUHN. NBC.

Senator PASTORE. In the instance that you brought out for Pittsburgh, could the network under the existing contract have overruled it?

Mr. KUHN. Yes; they could have.

Senator PASTORE. I see.

In other words, you have never reserved in your contract the right to black out, whether or not a game is blacked out has to be a decision of the network?

Mr. KUHN. That is correct, Senator.

This isn't to say that in another go-round we might not try to preserve that right, based on the fact that we have operating problems.

Senator PASTORE. I wanted to understand the situation.

Mr. KUHN. In our league championship series, since it has been instituted in 1969, we have averaged 38,000 in each stadium for each game, in stadiums which had an average of about 50,000 capacity.

Therefore, we have not reached capacity in those instances, and I think most people in baseball would feel the availability of the local game on television as well as the other league's game on television in the town, a doubleheader, in effect, coming into the town against the local game, has been a reason for our inability to sell out those games.

Now, because of our operating policy, because we have our own set of problems, this is the way we have elected to do business.

I would say as earnestly as I can to you gentlemen that we might feel in the future we had to take a different view of that, and we might go to a different system, where we tried to use the no telecast of local rights in order to protect our gate if the viability of the game was in danger by failing to do otherwise.

We might do that.

Senator PASTORE. I understand that.

Senator COTTON. Mr. Chairman, I came up here from a hearing on HEW to which I must return.

Could I get in my 2 cents' worth right now?

Senator PASTORE. You can get in your nickel's worth.

Senator COTTON. Thank you.

Mr. Commissioner, you mentioned a few minutes ago the overlapping seasons.

Now, I am a baseball fan, more so than a football fan, which I guess is unusual today. Perhaps this is the one thing that is worrying me about the future of American baseball because I see most people who are really devoted baseball fans are older people, and that doesn't augur well.

People say to me that everyone wants to watch football on television because the action is faster. That doesn't register with me, because they also spend a lot of time watching golf, and I think baseball moves a little faster than golf.

But you mentioned overlapping seasons, and I find myself personally rather resentful.

I don't mind having the choice of seeing four or five football games in the football season, even though it comes at a time when you get to the World Series in baseball. But, when, after the middle of July they start their preseason exhibition games and run the season clear through to February, then I find myself unable, many times, to watch a baseball game during its season, when as this year, there were four teams in the American League practically neck and neck for the division pennant. Then, I do find myself resentful.

Now, I am not trying to coax you and trap you and criticize your sport, or your rival sport. I wouldn't do that.

But, have you tried to do anything about that situation?

Mr. KUHN. Well, in terms of the overlapping seasons, I think that we have seen, Senator, I think we have seen the growth of the popularity of American sports to the point where what has happened is

that seasons have expanded and expanded, so that the overlap, which used to be fairly small, has now gotten quite considerable, at least as far as baseball is concerned.

But I would have to answer your question as to whether we have tried to do something about it by saying that we have not, nor do I see any particular prospect of our trying to persuade other sports to engage in some concert to shorten our season so that everybody would be nice and tidy.

Maybe we would like that. Maybe we wouldn't. Maybe we are just as happy with the competition we have. That is something that I think would need some reflection.

May I just say something on something else that you said, because it goes very much to my inner soul as baseball commissioner.

I think it is a fallacy, if I may say so, to think of baseball as an old man's game. I think, far from it, that dramatically the converse is true.

One of the reasons I am totally optimistic about the future of baseball is that, if you go to our ball parks, you will find the young people. We bring the young people of all ages into our ball park, not just the Little League kids, but the 19-year-old kids and the 25-year-old young adults.

I wish you had been with me in Detroit, if you will forgive the allusion to that again.

I wish you had seen the 10,000 people standing outside the park trying to get in, and seen the age of the people in that ball park.

I would guarantee that the average age was in the twenties, and this is, well, it is not totally characteristic of our games, but I would say it is not at all unusual to have that average in our ball parks among our fans attending our games, and for the future, it means we have room, and this is a benefit to us and we trade on it, we have had the benefit of having the young people in the parks and accommodate them.

Senator PASTORE. Was that shown locally on television?

Mr. KUHN. No; it was not. It was shown in Boston.

Senator PASTORE. How many people did you say were outside the stadium?

Mr. KUHN. There must have been 10,000.

Senator PASTORE. They just hung around?

Mr. KUHN. They not only hung around, but they staged too the greatest sports display in downtown Detroit that has ever been seen in a city in the United States and they won.

Senator PASTORE. The better fans are the ones that can't get in. That is my point.

Mr. KUHN. I think they were all together in staging this.

Senator COTTON. Let me finish.

What you say is very comforting, because of my keen interest in baseball.

Yet, I find members of my staff, very naturally, are all talking about watching the football game when I am anxious to watch the baseball game.

But I wasn't suggesting that you could or would, or that it would even be possible for you to get together with the other sports.

What I am thinking about is, getting together with the networks.

This probably has nothing to do with the matter of blacking out a hometown. I am just talking generally, and I want to get my innings in while you are here.

Now, I understand why football has preseason games to test out players and to bring down their team roster to allowed numbers kept on the team. I don't even object to such games being televised. But, it just seems to me to be pretty unfair in a large sense to have baseball driven off the screen for preseason football.

We have football running clear through to February.

I don't mind that, but I don't like it.

Now, to be sure, I can see a good baseball game on Saturday, usually on Sunday, and usually on Monday night, when I am home in New Hampshire, on the various Boston networks.

But, recently there was only one baseball game available from the time I was home from Friday night to Monday morning. Yet, during that same time, I had the choice of five football games.

Again, I don't expect you to get into a fight with the football people, because you aren't here for that purpose, and you wouldn't do it. But, don't you think that in your contract with the networks that we could get a little more baseball?

The baseball season is all over when the real contests in the football season begin. I understand there are many more baseball games than football games. I would like to have your comments on these observations.

Mr. KUHN. Yes; I think we can increase it, and as a matter of fact, Senator, we have increased it.

We have through our contract with NBC now gone to Monday night television of baseball. So that on a typical weekend in Boston, you can see either on Saturday or Sunday or Friday night, a Boston Red Sox game, one, let's say, on Saturday afternoon. You can see our Saturday afternoon game of the week, which is a national game, and on Monday evening, you can see our Monday game of the week, which is a national game.

So quite typically, in all the major league cities of the United States, you will see on the average of about three major league games every weekend, and in all cities of the United States you will see two.

This coming year, we will have 15 Monday night games and 26 Saturday games, so we think that is a lot of baseball, and I am not certain that too much more than that is warranted, and I listen with some sympathy when I hear Commissioner Rozelle talking about the danger that they may be telecasting too much.

Senator CORRON. I agree with that. But, I was home last weekend, and since I am pretty well confined to the house because of my wife's illness, I was really watching for baseball games. Last weekend, I saw one Saturday afternoon, but there was none Sunday. It was all football.

I suppose there was some particular reason for that.

Mr. KUHN. Senator, we are also there all during the week, which is important to realize. Also, we are there on the radio, and we are there a couple of times during the week, so baseball being a sort of a week-round game, it is spread out more, whereas football is concentrated essentially on Sunday, and shows up on Saturday and Monday as well.

Senator CORRON. I won't pursue the matter.

Mr. KUHN. I appreciate your interest in our game, and I want you to know, I think our game, notwithstanding some problems it has, has a very brilliant future.

Senator COTTON. I am happy to hear it.

Senator PASTORE. Do you feel you have anything else to say, Mr. Kuhn?

Mr. KUHN. I think I have covered most of the points I wanted to make. If there are other questions, I would be happy to answer those.

Senator PASTORE. There is a vote coming up, and we don't want you to sit here and wait for us unless you had something further to say.

We will be back shortly. Thank you very much.

(Recess.)

Senator PASTORE. We are ready to go, gentlemen.

Is Mr. Schneider here?

We are very happy to have you here this morning, Mr. Schneider.

STATEMENT OF JOHN A. SCHNEIDER, PRESIDENT, CBS BROADCAST GROUP

Mr. SCHNEIDER. Thank you, Mr. Chairman.

Senator PASTORE. Do you have a written statement?

Mr. SCHNEIDER. Yes; I do.

Senator PASTORE. You may proceed.

Mr. SCHNEIDER. My name is John A. Schneider. I am president of the CBS Broadcasting Group, and I am here to offer the views of CBS on pending legislation which would affect local television blackout of hometown sports events. Although my remarks primarily involve professional football, the views relate to other sports as well.

As a broadcaster, CBS is naturally opposed to blackout of television programming. Not only is CBS ready, willing, and able to broadcast hometown games on television, CBS is anxious to do so. It was because of our desire to make the best of professional football as widely available as possible that we took the first steps against blackouts by at least bringing in television broadcasts of other games, so that hometown television fans would not be completely deprived of the weekly opportunity to see professional football on the home screen.

CBS takes pride in the fact that the progress of professional football has been made within the system of free television and welcomes the opportunity to broaden its service. It is clear from what you have said about your bill, Mr. Chairman, that you want coverage available to as many viewers as possible. When the local blackouts are lifted by your legislation, sports fans and viewers across the country will expect coverage on free television. The FCC has recognized one of the threats to this kind of free television coverage. The Commission's antisiphoning rules prohibit pay CATV from preempting any sports event which has been broadcast on free television during the previous 2 years. But home football games have been blacked out for more than 2 years, and so the FCC rule does not protect them for free television—nor does the proposed legislation.

Instead of freeing home games to be seen on regular over-the-air local television, the result could be that local pay television systems could now siphon off such programming for their own paying audience.

Instead of giving everybody in the area free access to the coverage, they would merely be expanding the blackout. Free television would still be blacked out locally, and the television viewer would have to pay to see the local game.

Given the power to bid for sports attractions, pay television has no interest in expanding the audience. They are more interested in maintaining a seller's market. For a perfect example of unbridled pay television, consider the Joe Frazier-Muhammed Ali heavyweight championship prizefight. All U.S. and Canadian home viewing was blacked out, so the audience could be limited to some 369 ticket-selling locations. The fight was seen by only 5 percent, or one-twentieth, as many people as a middleweight championship bout on free television 10 years earlier. But this relatively tiny audience, little more than one and a half million, paid in more than \$16 million at the box office. Pay television measures its success only in terms of box office—not the number of people it reaches, but the amount of money it takes in, even if that means leaving most of the public out in the cold.

As the Frazier-Ali fight proved, the pay television standard is whatever the traffic will bear. If people are willing to stand in line at auditoriums for the prices charged for the Frazier-Ali closed-circuit prizefight, think what home pay CATV could charge for bringing popular local football games into the living room. And think, too, of the majority of people in virtually every local viewing area served by major league football who do not have pay CATV—either because they cannot afford it or because CATV simply has bypassed their neighborhood.

The purpose of the legislation before this committee, as I understand it, is to make it possible, recognizing the need to fill the stadium first, for local home viewers who cannot buy tickets to see local games on the home television screen. I would therefore urge that you consider making provision to protect the home viewer against having this opportunity taken away from him by pay television.

Most communities these days have a vested and understandable interest in filling their sports stadia, many of which are publicly owned. But there is no community in the Nation which has any kind of vested interest in turning over a unique public interest attraction to the closed market and restricted audience of pay television.

In the language of football, I recommend that this committee clearly rule that passing professional football games to pay CATV is offside and illegal. We therefore recommend that this committee, as a condition to continuing the antitrust exemption granted professional football, preclude the selling of television rights to any games, including the previously blacked-out home games, to cable, pay cable, or subscription television interests. With a provision of that kind clarifying that intent and effect of the proposed legislation, it can be a welcome guarantee of the rights of the free television viewer.

SENATOR PASTORE. Mr. Schneider, what do you think about the 48-hour rule in S. 4010?

What problems, or technical problems, would that raise insofar as the networks are concerned?

MR. SCHNEIDER. It does not raise any significant technical problems. If you are talking about the timespan of 48-hours; no.

Senator PASTORE. In other words, if, 48 hours before game time, the stadium was sold out, would there be any difficulty on the part of the networks in sending the program to that community?

Mr. SCHNEIDER. No, sir.

There are two matters here that I can attempt to clarify. We are in every football stadium broadcasting from that stadium to the away team's network, so that we have a crew and camera and announcers and so on, already in place, so that there is no technical problem from that point of view of our setting up in a stadium.

Senator PASTORE. It is only the idea of opening up a line?

Mr. SCHNEIDER. Yes. It is a matter of plugging another station in.

Senator PASTORE. How long would that take?

Mr. SCHNEIDER. It is instantaneous.

Senator PASTORE. Instantaneous.

Mr. SCHNEIDER. The difficulty, and it is indeed a minor difficulty, is that the station in the hometown that had not anticipated having that broadcast had other programing planned, but in 48 hours, they could alter that programing, and indeed if this blackout is lifted, those stations who have the potential of having that broadcast would plan programing that would be easy to move.

They could, in effect, have contingency programing.

Senator PASTORE. But that is a decision that the licensee would have to make.

Mr. SCHNEIDER. Yes, sir.

Senator PASTORE. Do you have questions?

Senator BEALL. I thank Mr. Schneider for his testimony, and I can't help but comment with regard to CATV. I share your concern, but at the same time those of us who depend on CATV for our television are even blacked out in many instances.

I happen to live in the mountains of western Maryland, and the only way I am going to get television short of a tremendous apparatus on my roof is through CATV. They black out games—

Mr. SCHNEIDER. With respect to cable versus free, if it is on free, it will be on cable. If it is on cable, it may not necessarily be on free.

So, we are advocating that these games do appear on free television, which also should accommodate those viewers who are attached to a cable system.

Senator PASTORE. How would you single out professional football under the exemption?

Mr. SCHNEIDER. How would I single it out?

Senator PASTORE. Insofar as equal protection of the law is concerned, I mean you make a suggestion in the last paragraph that the franchise rights would not be sold to cable. Isn't that the argument you make?

Mr. SCHNEIDER. That is right.

Senator PASTORE. And it should be made available to the free viewing public.

Mr. SCHNEIDER. That is correct.

Senator PASTORE. How would you ever do that?

Mr. SCHNEIDER. There are these considerations. In the antisiphoning provision of pay television and pay cable regulations, any sports attraction which is not now on television—which is on television now—cannot be sold for a period of 2 years.

Since these blackouts have never appeared on television, that is a loophole, if you will, so that these games instead of being released for free television could be sold within the existing regulation to pay television.

Senator PASTORE. But that would only go so far as the community is concerned.

Mr. SCHNEIDER. Yes. That would be the hometown game, though. Let's take Washington, D.C., if Kennedy Stadium were sold out—

Senator PASTORE. An amendment would go through so fast it isn't funny.

What you are saying is that they entered a contract with CBS to show the game, but they exercised their privilege not to have it shown in the locality where the game was being played?

Mr. SCHNEIDER. That is right.

Senator PASTORE. Now, you are suggesting that now they go to CATV and they say to CATV, "Insofar as the community home territory is concerned, we are blacking that out on free television, but we will sell you the rights on CATV"?

Mr. SCHNEIDER. That is right.

Senator PASTORE. They would never, never, never get away with it. Their argument has been here that if they show it to anybody at home, they can't fill up the stadium. If they ever tried a thing like that, this amendment would pass in no time flat.

I wouldn't entertain too much fear there, Mr. Schneider.

Mr. SCHNEIDER. I nevertheless thought it was worthy of mention.

Senator PASTORE. Are there any further questions?

We want to thank you, very, very much.

Mr. SCHNEIDER. Thank you.

Senator PASTORE. We have Mr. Roone Arledge.

STATEMENT OF ROONE ARLEDGE, PRESIDENT, ABC SPORTS, INC.

Mr. ARLEDGE. Mr. Chairman, and members of the Senate Subcommittee on Communications, my name is Roone Arledge.

I thank you for the opportunity to participate in these hearings and to present ABC's views on S. 4010, a bill which under certain circumstances, would eliminate the prohibition against telecasting home games of professional sports teams in their home territory.

ABC supports S. 4010. We believe that it is clearly in the public interest at this time to lift hometown blackouts of televised games in professional football, baseball, basketball, and hockey, in the manner provided by S. 4010.

Public interest in professional sports has grown dramatically in the past 20 years. Because of this interest, the financial value of television rights to these events aggregates millions of dollars each year, with the amount increasing annually.

Blackout policies have been structured to achieve a maximum of free television exposure consistent with protecting the home gate.

The television audiences, as well as the audiences at the games themselves, have grown consistently over the years and both have legitimate interests to foster.

S. 4010 is a constructive step toward maintaining the economic health of professional sports and maximizing availability, through television, of these events to the general public.

Lifting of the hometown blackout when a home game sellout is assured, 48 hours in advance of a game is a reasonable and fair way for all interested parties to continue to develop and prosper and for the public interest to be properly served.

While fully supporting the bill, I would like to take a moment to outline additional public interest problems which we see in the operation of the present blackout provision. These problems, we understand will shortly be considered by the FCC.

ABC, which participated in the recent oral argument before the Commission on sports blackouts, in July, intends to develop its position more fully, in further comments now scheduled to be filed on November 1, in docket No. 19554.

As you know, the blackout provision applies only to free television—it does not apply to the cable industry, or to other forms of pay, and closed-circuit television. This circumstance, in our view, creates a potential for abuse of the blackout privileges in a manner inconsistent with the interests of the public.

Even though it is free, television which has contributed immeasurably to the popularity of professional sports; it has consistently been denied the opportunity to present games where there is the most intense local interest; that is, home games in the home territories.

We intend to raise with the Commission, the basic question whether it is in the public interest to black out the free television industry, for the ostensible purpose of protecting the spectator gate; while allowing free television's competitors, operating free of blackout restrictions, and regardless of the effect on the gate, to carry the games.

We realize that consideration of these problems, at this time, would extend these hearings into other, and more complex areas of cable regulation and pay television.

We do not wish to complicate consideration of the bill which is before you, because, in the purpose for which it is intended, it is excellent, and should be promptly passed. Also, as noted, the FCC has promised to consider these additional problems in the near future.

But, we would be less than candid if we did not emphasize our concern with these additional public interest problems which arise directly from the fact that the blackout provisions apply only to free television, and not to its competitors in the growing cable and pay television industries.

Thank you, Mr. Chairman, for the opportunity to present this statement.

I will be happy to try to answer any questions that you and the members of the subcommittee may have.

Senator PASTORE. I do not know if this is the proper place to explore these additional matters. Is Mr. Schneider still in the room?

He has left?

You are in the sports section of the ABC?

Mr. ARLEDGE. Yes, sir; I am president of ABC Sports.

Senator PASTORE. Even if this is outside the realm of your jurisdiction, maybe you could try to give us an answer anyway.

I was wondering, what does this mean in terms of loss of advertising money? You take here, in Washington, for instance. If the game were shown, rather than being blacked out, and the house is sold out, you could attract good advertising; could you not?

Mr. ARLEDGE. Yes.

Senator PASTORE. I was wondering, has that ever been developed in any way?

Are there figures on that?

Mr. ARLEDGE. It is hard to put a dollar value on what it would mean. It obviously would enhance the attraction of the overall television packages that the leagues sell to the network.

Senator PASTORE. That is what I was thinking. If the games were broadcast in a community where they are now excluded, it would be more attractive to the network because there would be a greater audience to reach with advertising and therefore increased revenue. If this were so it would be another negotiating point for the league itself.

Mr. ARLEDGE. I do not think there is any question but that is true. There are some corollaries to that which diminish that somewhat. There probably would be more competition.

Senator PASTORE. I was wondering whether you could have the home office develop that, if it can be developed. Submit it for the record, if it can be. Let Mr. Zapple know if it cannot be.

Mr. ARLEDGE. I would be glad to. I doubt if we can come up with a dollar figure.

Senator PASTORE. I do not mean a dollar figure, but something that would give us more perspective as to what the situation might be.

In other words, it would not be completely negative.

Mr. ARLEDGE. It would be largely positive.

Senator PASTORE. These football teams, really, are in the best markets in the country. Those are the markets that the advertiser vies for. If there is something spectacular on television like professional football which would draw practically the whole community to the screen, it means a lot to the advertiser. He has to pay more money to the network to advertise, and the network has to give part of that revenue to the league.

I was wondering if that has been developed in any way. If it cannot be, it cannot be. Because I do not think it is really the crux of what is before us now.

All I wanted to do is to prove that it was not entirely negative.

Mr. ARLEDGE. I would say it would be very positive.

Senator BEALL. There would be no difficulty for the networks, or to the networks, if the professional football people decided to experiment with this on a voluntary basis immediately; would it?

Mr. ARLEDGE. No. We would be delighted to participate with them in any experiments they might undertake. There are certainly no technical problems. And I think Mr. Schneider outlined the only small problem there might be, disrupting a station's schedule, but the attractiveness of the games would be such that I am sure the station would be delighted to have it scheduled.

Senator PASTORE. That may be a proper question for you, or maybe we should wait for Mr. Wasilewski on this.

What about the complaints on the part of people who are blacked out. Is that aimed to the network, or to the licensee?

Mr. ARLEDGE. Well, it goes to both. You heard from one of our affiliates in Scranton yesterday, who had gotten quite a few complaints, and most of our stations get complaints when they are blacked out.

The network also gets them. It is strange that somehow, many people in the public seem to think that we are the cause of the blackouts, which,

of course, is the exact opposite. We have no wish to black out anything.

We certainly get a lot of criticism.

Senator BEALL. I have no more questions, Mr. Arledge. This has nothing to do with this hearing, but you are the network that brought us the Olympics, and I am not a television technician, but I want you to know as one sports fan, I thoroughly enjoyed the Olympics presentation, and I think your network did an absolutely splendid job of bringing the Olympics to the American public.

I hope it was a profitable operation. If it was not, it certainly was a great public service.

Mr. ARLEDGE. Thank you, Senator. It was not profitable, but it was a pleasure to do.

Senator PASTORE. But there was no blackout of Munich?

Mr. ARLEDGE. Not of that type.

Senator PASTORE. Thank you very much.

Mr. ARLEDGE. Thank you, sir.

(The following information was subsequently received for the record:)

AMERICAN BROADCASTING Co.,
Washington, D.C., October 17, 1972.

HON. JOHN O. PASTORE,

Chairman, Subcommittee on Communications, Commerce Committee, Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reference to the appearance by Roone Arledge, President of ABC Sports, before the Subcommittee on Communications on October 5, 1972. Mr. Arledge was asked to provide further information about the economics involved in lifting a television blackout in the home territory of a professional football team when that team was playing at home.

Here are the data we have been able to assemble in answer to that question:

The value of ABC's Monday Night National Football League football package would increase if blackouts of home territories of N.F.L. home games were selectively lifted each time there was a sell-out 48 hours before game time. It is difficult to attribute a dollar value to this increase, which, generally speaking, would be considered an added benefit for which the N.F.L. would attempt to negotiate more money for upcoming contracts with the television networks, and the television networks, in turn, would attempt to charge sponsors additional monies on an over-all basis.

It is not possible at the present time to attribute a dollar amount to each time a particular blackout in a particular market is lifted.

While, in general, lifting blackouts would increase the value of television network packages, under certain circumstances the reverse would be true. For instance, there is one N.F.L. team in Chicago. When the Bears are playing at home, and if they are sold out, CBS's telecast of that game would compete in Chicago for the first time with NBC's telecast of an American Football Conference game. The value of NBC's rights, under these circumstances would probably decrease, while the value of CBS's rights would probably increase.

With warm regards,

Sincerely,

EUGENE S. COWEN,
Vice President.

Senator PASTORE. Mr. Foster?

STATEMENT OF DAVID H. FOSTER, PRESIDENT, NATIONAL CABLE TELEVISION ASSOCIATION, INC.; ACCOMPANIED BY CHARLES LIPSEN; AND CHARLES S. WALSH

Mr. FOSTER. Mr. Chairman, my name is David H. Foster. I am president of the National Cable Television Association, Inc.

With me here today are two members of my staff, Mr. Charles

Lipsen, on my far right, and Mr. Charles Walsh, next to me, who will help me with technical subjects

NCTA represents in membership about 1,175 operating cable television systems serving over 75 percent of the almost 20 million cable television viewers in the country.

The great majority of cable systems represented by NCTA receive major league sports programs on the television broadcasting stations they carry.

A few, such as systems in New York State, have purchased the rights to games of certain professional basketball and hockey teams which are provided on locally originated channels for cable subscribers.

Rights to professional soccer games and the recent Fischer-Spasky chess match have also been contracted for by cable systems.

I think I should interject at this point that in no case have the home television rights to these sporting events, which have been purchased, especially for cable, in no case has there been an extra charge made for these professional sporting events. They have been purchased by the cable system to increase their competitive impact in the marketplace.

They feel they have to provide these extra sporting events in order to appeal to subscribers in New York City who have a very rich diet of all-year television, and therefore, it is a competitive matter for the cable systems, rather than a desire to cash in, as has been suggested.

The cable communications industry has requested time to speak on the proposed revision to the statutory sports blackout as a result of recent proposed regulations by which the Federal Communications Commission seeks to impose an even broader sports blackout on cable systems than is presently practiced by the pro leagues and the television networks today.

Section 2 of Public Law 87-331, which S. 4010 and S. 4007 and certain amendments to S. 2373 would modify, permits television blackout of games in the home territory of a team when it is playing at home.

Cable television is not specifically covered by the statute nor have the contracts of the professional leagues required cable systems to black out sports events.

When the antitrust exemption was debated in 1961, cable television, with its unique ability to pinpoint audiences, was not considered.

Cable television differs significantly from television broadcasting which transmits to the public for up to a radius of 100 miles.

Once broadcast, the signals of a television station are not selectively blocked. The only practical solution available to the courts and Congress, at that time, was to block broadcasts by the team's home city television station when the team played at home, if the game was to be protected.

Because a television station's signal cannot be selectively blocked out, the effect of the sports blackout was to black out an area much larger than necessary to protect the home territory.

The technology of cable television, with both a limited service area and fractional penetration into homes in that area, make the imposition of the blackout inappropriate.

However, the Federal Communications Commission has recently proposed to impose by regulation a more restrictive sports blackout on cable systems than is practiced today by the sports leagues and the television networks.

The effect of the proposal would prohibit cable television systems in the "home territory" of a city with a professional sports team from carrying any game of the same sport not locally televised on the day when the home team is playing at home.

Thus, the proposed rule would require a cable system in Connecticut, which happens to be within the grade B contour of the New York stations, to block out the Boston Bruins games on channel 38 when the New York Rangers are at home.

Similarly, a cable system in Washington, D.C.—assuming the Nation's Capital is ever permitted a system—could not likewise carry the Colts games from a Baltimore television station when the Redskins are at home.

And even more incredibly, a CATV system in Washington County, R.I., within the grade B contour of Boston, would be forced to block out the Bruins and the Celtics on channels 38 and 27 when they are playing at home, even if the game is a sellout and broadcast on Boston television.

We strongly urge that if the FCC's regulations permit a cable television system to carry the signal of a particular television station, it must include the right to carry the sports programs on that station.

The Commission's stated purpose for adopting this rule is to impose on cable television systems the Commission's own interpretation of the intent of Public Law 87-331 to protect the "receipts from home games," which was referred to by the Commission in its proposed rule-making in docket 19417.

Senator PASTORE. That hasn't been finalized; has it?

Mr. FOSTER. No.

Senator PASTORE. That is the question I asked before.

Mr. FOSTER. We understand.

Senator PASTORE. You remember my remark. I am not interested in taking away anything. I am just interested in giving other people the same advantage.

Mr. FOSTER. Right.

Senator PASTORE. I think it would be a sad thing to say to CATV, "Even though you could take this signal from a far away place beyond the home territory, you are denied doing it because you can't give to your people what others are prevented from getting."

I say let's not suffer. Let's both have the advantage.

So as far as I am concerned, it isn't a matter of taking away, it is a matter of giving.

I am in favor of removing the blackout, I am trying to.

Mr. FOSTER. Absolutely.

Senator PASTORE. I don't want anybody deprived of that privilege because that would be self-defeating.

In other words, I don't think it is the function of the FCC to protect the gate. That is the function of the league and the clubs. They have a perfect right to protect the gate; they should. Nobody wants to impinge upon that right.

We are finding no fault with that, but I don't think it is the duty of any governmental agency to guarantee a full gate.

Mr. FOSTER. We certainly agree with that position, Senator, that is the argument that we have made in the FCC, that they are without authority to protect the sports teams' gate.

NCTA submits that the Commission is without the authority to protect the home team's gate and to effect this by extending the antitrust statute to impose a blackout on cable systems.

In *United States v. Southwestern Cable Co.*, 392 U.S. 157 (1968), the U.S. Supreme Court held that the Commission's authority to regulate cable communications systems was restricted to that ancillary to its regulation of television broadcasting.

While the Commission may regulate cable in order to preserve the health of television broadcasting, it is something quite different to regulate cable television for the Commission's avowed purpose of protecting the economic interests of promoters of professional sporting events.

NCTA maintains that this is power only Congress can exercise.

In light of the Commission's apparent intentions, NCTA urges this committee and the Congress to request the FCC to cease its activities in this area as unauthorized by the Communications Act of 1934.

Absent congressional direction preventing it, the Commission appears to be moving expeditiously toward imposing its sports blackout regulations on cable systems.

Consequently, renewed congressional interest in the impropriety of the sports blackout is particularly timely from our industry's viewpoint.

NCTA believes that if the original purpose of section 2 of Public Law 87-331 was to protect the home gate of many fledgling sports teams, the rationale for the blackout, particularly as it relates to cable television, does not exist today.

Consequently, the cable communications industry most enthusiastically supports the direction that S. 4007 would give the FCC; that is, the total abolition of the sports blackout exemption.

Such legislation would relieve television stations of the statutorily permitted blackout. Such a bill would also provide clear direction to the FCC to alter its present approach on the cable television sports blackout.

S. 4010 does not go as far as S. 4007 since it removes the exemption for blackouts only if the game is sold out. It would not, in our opinion, provide sufficient direction to the FCC.

However, it does provide, hopefully on an interim basis, some relief for the sports fan. In this light, NCTA feels compelled to request that certain important areas be clarified in S. 4010 before total support of the Nation's 20 million cable television viewers would be justified.

First, as presently drafted, it appears that the language of S. 4010 would have the effect of eliminating the television blackout of only the home game when the home game is sold out.

The elimination of the home game blackout as provided in S. 4010 may be quite adequate for television stations. Most teams in recent years have only been interested in their own games being blacked out while permitting the televising of other teams' games into the home team's territory, for example, when the Redskins are playing at home, the New York Jets-Baltimore Colts game is shown on a Washington television station.

Notwithstanding the practice of the leagues' teams today, the FCC's proposed sports blackout regulation would make it mandatory for cable systems in the home territory to black out all games of the same sport.

As we interpret it, S. 4010 would not remove the blackouts in effect for other games of the same sport.

Clearly, there is no logic for retaining the blackout for these other games when the home game is sold out.

Irrespective of a sellout, the effects of televising these games into the home territory are at best peripheral to the purpose of protecting the home gate.

The sports leagues' nonexercise of this blackout is the best proof. If S. 4010 is enacted as drafted, even with a sellout, cable systems, through the proposed FCC rules, and television stations, through a change of heart by the sports leagues, could still be required to black out the Miami Dolphins-Minnesota Vikings game in Washington when the Redskins-Cowboys game is sold out here.

S. 4010 should be modified to prevent this kind of unfairness.

Finally, we have some questions as to how exactly S. 4010 will work to the full and proper advantage of the sports interests, the media, and the public.

S. 4010, in effect, forces the team with a sellout at home to drop the blackout of the game since its antitrust exemption will be lost.

But the cable television industry asks what specific alternatives may be available to a team in dropping the blackout.

For example, the National Football Conference of the NFL contracts with CBS to sell it the television rights to the National Football Conference Sunday games nationwide with a blackout in the home territory of a National Football Conference team playing at home.

If there is a stadium sellout, must the NFC sell that blacked out area to CBS who would transfer it to its affiliate?

Or, to put it differently, can the game be retained by the league in the home city for sale to someone other than CBS, that is, an independent television station or the local cable system, and not be branded a blackout?

The cable communications industry hopes that the network and its affiliate would not have a monopoly on obtaining the rights to that game should it be a sellout.

We do not think that the chairman of the subcommittee and the other cosponsors of S. 4010 did not intend for this to be the case. Certainly, the teams of the pro sports leagues would not want to be required to sell a game, if it is sold out, to a particular network.

We hope that this can be clarified in the language of the bill or in its legislative history.

Senator PASTORE. My answer is "No," and I have just explained it.

Mr. FOSTER. Yes.

Senator PASTORE. This would be a terrible thing to do. Let them reserve the right to blackout and then sell the blackout game to another group of people who collect a subscription fee in order to provide the service to a person who lives in the blackout territory.

You can't do that. I mean, as I told you before, it isn't a question of depriving CATV from taking that signal and bringing it in if they can. That isn't the point we are interested in.

What we want to do is open up that screen. If it opens up for both, fine. I mean, you can't take it away from the free television viewer and sell it to the fellow who can afford to pay a subscription fee.

If you were sitting where I am, you wouldn't buy that, either.

Mr. FOSTER. I fully understand and appreciate the Senator's views on this point.

Senator PASTORE. I can understand your pitch.

Mr. FOSTER. We have found in these situations in New York and Cleveland and Milwaukee, where the cable systems have been able to purchase sports rights that there have been a variety of motives.

Senator PASTORE. That is not a national package broadcast that you are talking about. That is purely a broadcast of local interest in a local team.

But we are talking about a national operation. If you have a local team back home in basketball or hockey, which is of concern only to local viewers, and they sell their rights to you, that is their business. But I am not talking about that. We are talking about using national hookups via the networks, and yet taking a small part of the Nation and blacking it out,

We want to know why this is done if a game is sold out.

We think it is discriminatory against the blacked out community. That is what this bill is all about. Not to hurt CATV, not to hurt the game, but to help the free television viewer.

That is all. That is the interest here. We are interested in people, not profits.

Mr. FOSTER. The existing professional sports blackout right deprives the viewing public of programing without any concomitant benefit to the professional sports teams.

Indeed, many teams will be deprived of fan interest that they would otherwise have. Thousands of people take to the highway each week making long pilgrimages to the motels on the periphery of the blackout areas in order to see their teams play.

In Washington, D.C., the Redskin Tours advertised today are not to Kennedy Stadium, but rather to the Holiday Inn in Fredericksburg, Va.

A stadium sellout, bad weather, or distance from the stadium should not preclude the viewing of the game. It is the unique capability of the television set to provide this advantage.

The cable communications industry believes that its unfettered right to carriage of sports programing is consistent with the interests of the sports teams and the general public.

On behalf of this industry, we make two requests:

First, that the sports leagues should not inadvertently be limited in selling in the marketplace on a competitive basis the rights to the blacked out games;

Second, that the characteristics of cable communications be examined carefully by Congress prior to the FCC extending the blackout to cable television by administrative fiat.

In this very emotional and sensitive area, the Congress is peculiarly the appropriate guardian of the public's rights.

Senator PASTORE. Thank you very much.

Mr. FOSTER. Thank you.

Senator PASTORE. Thank you very much.

Is Mr. Roger Stanton here?

We will now hear from Mr. Wasilewski.

As always, we are very happy to have you.

STATEMENT OF VINCENT WASILEWSKI, PRESIDENT, NATIONAL
ASSOCIATION OF BROADCASTERS

Mr. WASILEWSKI. Mr. Chairman, I have such humility to realize that at this point I would be somewhat redundant in going through my statement, because that which has been said by Mr. Schneider and Mr. Arledge pretty well compared with what I have said, and your assurances to Mr. Schneider and Mr. Arledge take care of the big issue that I wanted to get across relative to the potential impossibility, now, as you put it, of selling—

Senator PASTORE. If you would allow us to put the statement in the record, I would like to ask you a question or two.

Mr. WASILEWSKI. Yes.

Senator PASTORE. What is the experience of the licensee with the blackout question? Not that that is an essential point in our hearing, but I am wondering about in terms of how the community feels?

The licensee is more or less the one that has the contact directly with the viewer, and he is the one that gets the complaint. Do we have any documentation with regard to this?

Mr. WASILEWSKI. In the sense of documentation with regard to this?

We have very little, because I think most viewers, sir, have regarded this blackout as a fact of life since about 1961, and until your bill recently was introduced in conjunction with the other Senators they have not realized that they have a possibility of modifying this situation. I think that you will see a great uprising now in viewer expressions of viewpoint.

Senator PASTORE. You take the District.

What is the reaction of these stations with reference to the blackout. What does it mean in terms of attracting more advertisers?

Mr. WASILEWSKI. I can assure you that the stations that would be those that would carry the sold out games, the normal stations that carries the away game in almost every instance that I can think of would be very, very pleased and happy to have the opportunity to carry that sold out home game.

I have received statements from the other broadcasters around the country. I started to say Washington, D.C., but I have not had any contact as such with WTOP here, but I am sure the normal business situation would indicate that they would be happy to carry the Washington home game.

Senator BEALL. Mr. Chairman, thank you. Mr. Wasilewski, various testimony yesterday indicated we would be limiting the availability of the games through radio if we adopted this amendment. Do you agree?

Mr. WASILEWSKI. I can see how certain radio stations if we opened up the sold out home game to television would have certain economic injury done, but on the other hand, I think what we are talking about here is the free and open competitive world in which we live, and we are talking about the public interest as in contradistinction to individual interests of either radio stations or television stations or networks.

I think this is a fact of life that would be accepted by the radio and broadcast industry. Furthermore, much of the radio listening is done

not at home, but outside. I read Mr. Rozelle's statement about the 80-percent cutback. I just have no figures either to dispute or to agree with him on that, but I think what we are talking about is opening up to the public interest rather than concern per se about individuals.

Senator BEALL. You don't envision the day coming, as Mr. Rozelle envisions, where professional football games would have to pay radio stations to take their games?

Mr. WASILEWSKI. No.

Senator PASTORE. Thank you very much. At this point I ask unanimous consent to insert in the record, statements submitted by Hon. Dante B. Fascell and Hon. Seymour Halpern.

Is there anyone else here who would like to testify for or against this bill today? This concludes the hearing. We will take the matter under advisement.

(The statements follow:)

STATEMENT OF VINCENT T. WASILEWSKI, PRESIDENT OF THE NATIONAL ASSOCIATION OF BROADCASTERS

Mr. Chairman, my name is Vincent T. Wasilewski. I am President of the National Association of Broadcasters, which is the national trade association of the broadcasting industry. Our membership consists of individual broadcast licensees and networks. At this time, our Association includes 2193 AM, 1334 FM and 524 television stations, together with all of the national radio and television networks.

S. 4010, the bill under consideration in these hearings, would serve to amend Section 2 of Public Law 83-331—the 1961 Sports Broadcast Act—by limiting the right of the professional sports leagues in this country to impose a blackout upon the televising of the home games of a league team member when that home game is sold out within 48 hours in advance of its scheduling starting time.

NAB believes that this proposed legislation is fully consistent with the public interest in the maximum availability of broadcast coverage of professional sports games. At the same time, S. 4010 will preserve for the professional sports leagues the control over the distribution of their broadcast rights which the Sports Broadcast Act was intended to create and which is necessary to the continuation of strong, competitive professional sports in this country.

In 1961, when Congress was considering the various legislative proposals which led to the passage of the Sports Broadcast Act, I testified before the Antitrust Subcommittee of the House Committee on the Judiciary. We asked that the professional sports leagues be restrained by Congress from arbitrarily blacking out from the airwaves, through concerted activity, the telecasting and broadcasting of events which have great appeal to the American public. We believe that, where a professional team is playing at home and has sold out its stadium, the imposition of any blackout upon local broadcast coverage represents the kind of arbitrary and overly-broad application of the blackout privilege which we opposed in 1961.

We fully understand the importance of the blackout privilege as initially recognized by the 1953 NFL District Court decision of Judge Grim. Professional sports teams should have the right to protect against broadcast dilution of their potential gate receipts. We also recognize the significance of the Sports Broadcast Act itself, which permits the professional sports leagues to pool their broadcast rights and distribute the resulting revenues among their member clubs—weak teams and strong teams alike. We do not dispute the importance to a home team of being able to have all of its away games broadcast in its home market. Broadcasters themselves want to be able to continue to provide the American public with a wide variety and a large number of sports events. We realize, as well, that the sports pooling agreements make possible the existence of strong competitive professional sports teams in this country and help preserve the regional broadcast sponsorship for these events which make our broadcasting coverage possible.

Yet, in spite of all this, it should be remembered that it is only by virtue of Congressional action that professional sports have been permitted to establish

the beneficial broadcast arrangements which they now enjoy. Where it can be demonstrated that the public interest demands it, NAB believes the Congress should modify the law which bestows these pooling rights upon professional sports. NAB sees no reason why professional sports agreements should be able to prevent local stations from providing sports fans in their communities with coverage of the game of their own home team, being played right in their own city, when that home-game broadcast coverage could neither interfere with a capacity stadium audience nor with any of the sports leagues' control over the broadcast coverage of other games. NAB believes, in short, that this criterion for an exemption to the home-game blackout privilege is in the public interest.

Furthermore, it is our understanding that the original exemption from the antitrust laws applies only to over-the-air free broadcasting as we know it, and not to cable, pay cable, or pay television. Thus, it would seem that the exemption contained in S. 4010 would apply only to over-the-air free broadcasting but, if not, we believe the bill should be amended to make that clear.

Thank you, Mr. Chairman.

STATEMENT OF HON. DANTE B. FASCELL, U.S. REPRESENTATIVE FROM FLORIDA

Mr. Chairman, first let me congratulate this Committee for holding these hearings to reconsider the antitrust sanction extended to professional team sports. The time has indeed come for Congress to act, and I fully support your efforts to allow broadcasting of home games when those games are sold-out.

In 1961, Congress granted professional sport leagues two exemptions from the antitrust laws. The first authorized agreements between professional sport leagues and television networks to pool and sell as a package the rights to televise league games. The second authorized the restriction of game telecasts within the home territory of a member club of the league on a day when the club is playing a home game. While these exemptions applied to the televising of all professional sports, the problems that have arisen primarily related to football, as we all know.

What do these exemptions mean for the football fan? Presently, the National Football League unilaterally imposes a television blackout of games in the "home territory" of the local club. "Home territory" is defined by the NFL bylaws as "the surrounding territory to the extent of 75 miles of (a home) city." In practice the blackout extends even further than this 150-mile wide circle since game telecasts by stations whose signals can be received within the area are also prohibited.

We are all familiar with what this means for Washington Redskins fans. While it is virtually impossible to get a ticket for a home game there is no way that a Redskins fan can see the game without making an all day trip.. During the last season, the games were televised by a Baltimore station, and some Metropolitan Washington fans were able to receive the game on local channel 2, the Baltimore station. This year even that has been eliminated, in spite of the fact that it remains impossible to buy a ticket.

Consider the plight of the Miami Dolphins fan in my own District. Because of the blackout restrictions, the closest stations to Miami which can carry the game are in Daytona Beach, 257 miles away, and Tampa, 210 miles away. This means that a dedicated Dolphins fan must travel well over 150 miles in order to be able to pick up even a weak television signal of the game. With the frequency of stadium sellouts, this is a grave injustice.

Nationwide, the existing blackout restrictions are unconscionable. In the first place, the local fan in large part subsidizes his local team whether or not he is able to get into the stadium to watch them. Local taxpayers foot the bill for building the stadiums they cannot get a ticket to sit in. In addition to the stadium itself, the public subsidizes the teams through parking and other associated concessions. The profits from such concessions, in large measure, go to the teams. Also, the public suffers the inconvenience, and pays for the traffic control, of crowds of people fortunate enough to be able to attend the game. The general public is outraged, and rightly so.

The 1961 legislative sanction was taken at a time when the financial position of the major sports leagues, football in particular, was much more precarious than is the case today. For example, in 1961 the NFL's contract with CBS Television brought about \$332,000 to each of the 14 teams. This year, under contracts the NFL has negotiated with three major networks, each of the 26 teams receives about \$1.5 million. Since 1961, attendance at NFL games has doubled and most regular season games as well as exhibition games are sellouts or near sellouts.

Obviously the existence of the individual clubs in the NFL is no longer economically threatened. Its strength is manifested by the increase in the number of clubs and the number of games played each season as well as the increase in the attendance and television revenue figures.

However, the NFL continues to support the practice of television blackouts stating that there would be fewer or perhaps no sellout games next season if the blackouts were lifted this season. The evidence does not support this contention. The blackout of the Orange Bowl game in Miami was lifted on an experimental basis last year, 1971. Prior to that year, there had been few Orange Bowl sellouts. Last year, they added extra seats and still had a sellout, even though the game was televised locally.

The history of the Rose Bowl game, which has been a sellout for the last 18 years and has never been blacked out, is further proof that the NFL's contention is inaccurate.

Originally the blackout was a paradox: a restriction on public access to professional sports contests to promote public access to professional sports contests. Today the blackout restricts public access to games more than it did in 1960, although such economic protection is no longer essential to the NFL. The NFL's refusal to lift the blackout of a sold out game that is so financially successful evidences an insensitivity to the public interest which should not be condoned.

Mr. Chairman, there is a logical solution to the problem, one which would allow all fans to enjoy their home team without threatening professional sports. Surely, if all tickets are sold to a home game a reasonable time period prior to that game, the home public should have access to the game on television. Perhaps the 48 hours suggested in S. 4010 is insufficient time for all to be notified and arrangements made. I am sure, however, that a reasonable time period could be agreed upon.

Mr. Chairman, I am glad that you have taken the initiative to give the sports blackout problem the consideration it deserves, and strongly urge quick and favorable action so that home town fans can enjoy their team this season.

Thank you.

STATEMENT OF HON. SEYMOUR HALPERN, U.S. REPRESENTATIVE FROM NEW YORK

Mr. Chairman, I am grateful for the opportunity to speak in support of S. 4010, a bill to amend the act providing an exemption from the antitrust laws with respect to agreements between persons engaging in certain professional sports for the purpose of certain television contracts in order to terminate such exemption when a home game is sold out.

In 1953, the Pennsylvania Federal District Court extended a limited television and radio blackout privilege to professional football. This judicial privilege received legislative sanction in 1961 at which time Congress granted professional sport leagues two exemptions from the antitrust laws. One exemption authorized agreements between professional sport leagues and television networks to pool and sell as a package the rights to televise league games. Such an agreement may not restrict telecasts of games in any area, "except within the home territory of a member club of the league on a day when such club is playing a game at home". This "home territory blackout" is the second antitrust exemption and the one with which S. 4010 concerns itself.

Although the 1961 Congressional action is applicable to all professional sports, it is professional football which has caused the most controversy. In basketball and baseball, there is a greater opportunity for fans to attend home games, and many of the games are not televised at all. Professional hockey has perhaps even a higher number of sellouts and season ticketholders than pro football; however, the National Hockey League and individual club owners have shown some flexibility toward the televising of home games. In recent years a number of the nationally televised NHL games have not been blacked out in the home territory of one of the teams involved, particularly where fan interest in that city is very high. Also, most of the Stanley Cup playoff games are not blacked out locally.

Unfortunately, the National Football League has not extended this public interest policy to home territory football games. The general public is outraged, and rightly so. The overwhelming majority of pro stadiums are owned by the people. The stadiums are used by the professional teams, who make a tremendous amount of money, while thousands of the public cannot purchase a ticket to a home game nor view the game by television. Football is the only professional

sport to receive regional and nationwide telecasting for practically all games, including exhibition and postseason contests. This demand on the part of the fans, coupled with the scarcity of tickets in most league cities, underscores the urgency for review of congressional policy toward television blackouts.

The 1961 legislation removes the antitrust exemption for agreements prohibiting the telecasting of games in any area, except in the home territory when a team plays a home game. Thus the section allows agreements to black out telecasts of the home game itself, within the home territory, *and* of outside games between other teams, neither of which is the home team. Today, "home territory" is defined by the NFL bylaws as "the surrounding territory to the extent of 75 miles in every direction from the exterior corporate limits of (a home) city." (Constitution and By-Laws of the National Football League, art. 4.1, 1971). Moreover, the 75-mile radius ruling has the effect of prohibiting home viewing of games even beyond the radius since the televising of home games by stations beyond the radius whose signals can be received within that radius is also prohibited.

I feel that the time has come for Congress to reevaluate the financial necessity of football blackouts. The 1961 legislative action was taken at a time when the financial position of the major sports leagues, football in particular, was much more precarious than in the case today. Since 1961, attendance at NFL games has doubled and most regular season games as well as exhibition games are sellouts or near sellouts. The 1971 total ticket sales for all clubs in the American Football Conference accounted for 66 percent of total stadium capacity and in the National Football Conference for 74 percent of total stadium capacity. On the average, 50,000 fans paid to fill seats at regular pro league games while tens of thousands were turned away. On January 26, 1970, NFL Commissioner Rozelle announced that the league had reached a four-year agreement with the three major television networks, reported to involve \$142 million. The agreement covers the telecast rights to all NFL games during the four years of the contract and amounts to \$35.5 million annually.

However, the NFL continues to support the practice of television blackouts given the premise of financial necessity. In 1953, the Pennsylvania Federal District Court did rule in favor of blackouts, deciding that professional football needed financial protection. This conclusion was based on evidence that the 1950 Los Angeles Rams suffered poor attendance when all their home games were televised.

Today is 1972, not 1950. Improved highways and suburban transit systems and the growth of the metropolitan population today give a larger segment of the population access to professional football games than in 1950. This increase in potential ticket buyers should decrease the amount of blackout protection necessary to support gate revenues.

Moreover, very few fans would trade a stadium seat at the 20-yard line for a 50-yard line television seat in an easy-chair, even if they had the option. Anyone who has attended a professional game in person knows television viewing is a different experience. The exhilaration of being a part of the crowd's reaction can only be seen, heard, and felt at the stadium.

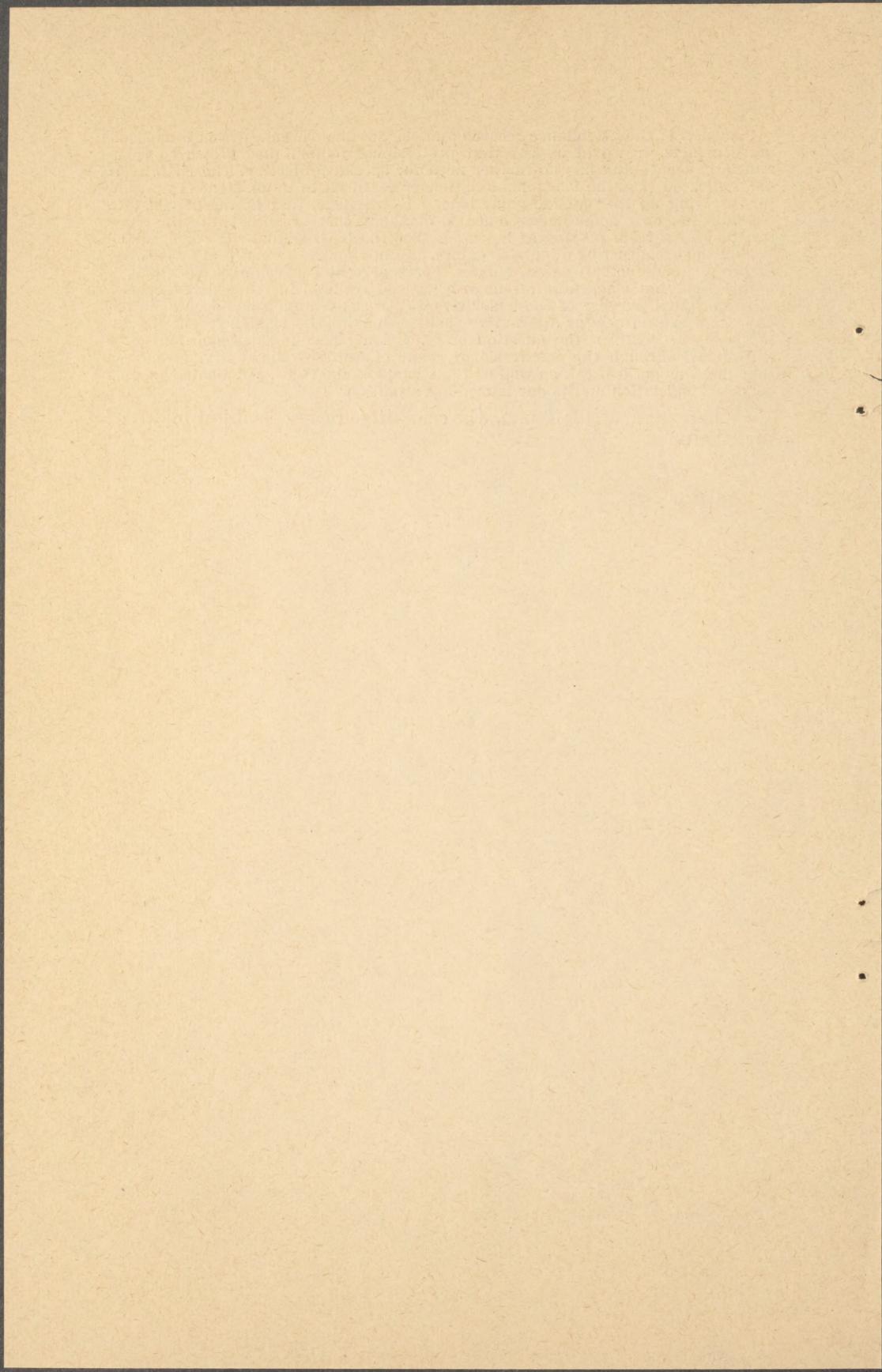
In addition, the prevalence of football television coverage makes stadium attendance an attractive alternative. In most areas fans can watch three games a weekend for the fourteen week NFL season—two Sunday afternoon and one Monday night. Only on seven Sundays during the season can local fans watch the home team play at the home stadium. It is reasonable to assume that many home team fans will continue to take advantage of those opportunities, even if the game is televised.

Proponents of the football blackout include another point in their arguments, which again I feel lacks validity. They point out that there would be fewer or perhaps no sellout games next season if blackouts were lifted this season. For the various reasons previously stated, I do not agree with this point of view. Moreover, this argument is extraneous to our discussion of S. 4010, which proposes that local blackout be ended *only* when the game is sold out 48 hours before game time.

Considering the attendance records and the sizeable revenues from broadcasting contracts, it would appear that professional football has grown to be financially secure and has no further need for special protection. The NFL itself has indicated that the blackout is no longer essential to its existence by voluntarily giving up its "outside game blackout" privilege, that is, the privilege to blackout not only home games but also outside games broadcast into the home territory of a team playing at home. In 1966 the NFL voluntarily removed the ban on the broadcasting of outside games, and in view of the fact that attendance at professional football games climbed up 88 percent between 1965 and 1970, it is apparent that slackening attendance has not resulted in reduced revenues.

The original purpose of the legislative antitrust exemption has been achieved and there are no new or alternative justifications for its existence. The inflexibility of the NFL on the question of television blackout should no longer be encouraged through the congressional grant of antitrust immunity. It is time that the fans got a break as well as the owners of the clubs. Mr. Chairman, this proposed legislation merits our immediate attention.

(Whereupon, at 12:40 p.m., the committee recessed subject to call of the Chair.)



ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

(The following information was referred to on p. 127:)

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., October 6, 1972.

HON. JOHN O. PASTORE,
Chairman, Subcommittee on Communications, Committee on Commerce, U.S.
Senate, Washington, D.C.

DEAR SENATOR PASTORE: During my October 5 testimony at the Subcommittee hearings on sports blackouts, you asked for a further indication of the number of complaints the Commission receives on this subject.

For fiscal year 1972, the Commission received 140 complaints concerning sports of which we estimate more than 100 were received during the football season and complained of sports blackouts. I am enclosing a few representative letters together with typical responses.

You will recall that I mentioned in my testimony a Texas television station that last year was denied permission to reduce its power by 90 percent in order to prevent its Grade B signal from penetrating the 75-mile barrier around Dallas. You may be interested to know that at that time the Commission received a petition signed by some 5,000 Dallas fans protesting the television sports blackout situation.

I trust this information will prove helpful.

Sincerely,

DEAN BURCH, *Chairman.*

Enclosures.

DECEMBER 23, 1971.

MR. PETER BUCKMAN,
Torrance, Calif.

DEAR MR. BUCKMAN: Your letter addressed to President Nixon, which was also signed by several others, has been referred to this Commission for reply.

As you may know, the Commission is prohibited by law from censoring broadcast matter and it does not attempt to direct licensees in the selection or presentation of specific program material. Moreover, the telecasting of sports events is generally considered to be a private contractual matter between those having the broadcast rights to the events and the station or network carrying the broadcast. The television blackout of certain sports events is authorized under Sections 1291-1293 of Title 15 of the U.S.C., dealing with the exemption of certain television agreements from antitrust laws. However, you may be interested to know that legislation has been introduced in the present session of Congress to amend these provisions.

Thank you for writing.

Sincerely yours,

WILLIAM B. RAY,
Chief, Complaints and Compliance Division, Broadcast Bureau.

TORRANCE, CALIF., December 6, 1971.

PRESIDENT RICHARD M. NIXON,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: Regarding the coming football game on December 13, 1971, Washington vs. Los Angeles; as the game here is sold out and Channel 7, our local television station, at present is not planning to televise the game, would it be possible for you to intercede to have it televised?

Thank you.

Pete Buckman, Clarence C. Bank, Claude L. Sdugam, H. A. Bornes,
G. J. McReynolds, Vicki Harper, Marrie L. Mendust, C. Sims,
Harris Gassalen, J. L. Paulon, E. P. Walstaff, Joan Eagon, R.
Cooper.

DECEMBER 21, 1972.

HON. LAWTON CHILES,
U.S. Senate,
Federal Building,
Lakeland, Fla.

DEAR SENATOR CHILES: This is in reply to your communication of December 10, 1971, enclosing a copy of a letter from Mr. Carl W. Orleman concerning the television blackout of professional football games in his area.

As you may know, the Commission is prohibited by law from censoring broadcast matter and it does not attempt to direct licensees in the selection or presentation of specific program material. Moreover, the telecasting of sports events is generally considered to be a private contractual matter between those having the broadcast rights to the events and the station or network carrying the broadcast. The television blackout of certain sports events is authorized under Sections 1291-1293 of Title 15 of the U.S.C., dealing with the exemption of certain television agreements from anti-trust laws. However, your constituent may be interested to know that legislation has been introduced in the present session of Congress to amend these provisions.

I trust this information is helpful and that you will let me know if I can be of further assistance.

Sincerely,

DEAN BURCH, *Chairman.*

U.S. SENATE,
December 10, 1971.

Mr. DEAN BURCH,
Chairman, Federal Communications Commission,
Washington, D.C.:

Because of the desire of this office to be responsive to all inquiries and communications, your consideration of the attached is requested. Your findings and views, in duplicate form, along with return of the enclosure, will be appreciated by

LAWTON CHILES,
U.S. Senator.

MIAMI, FLA., *November 25, 1971.*

HON. LAWTON CHILES,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CHILES: I realize fully that the subject of this letter is not of itself a matter of the importance of many other national affairs which must occupy your attention. Nevertheless, I believe it is a Federal area of responsibility, and the injustice to the two million people of southeast Florida who reside from Miami on up through West Palm Beach has become so rank—and possibly outright illegal—that I am calling the details of it to your attention with the hope that it may interest you.

The reference is to the television blackout policy of the local Miami Dolphin Professional football team and of the National Football League as respects all of southeast Florida. I have just learned a startling fact about these blackouts, one that I feel certain is virtually unknown to the two million people affected.

This past Sunday, Nov. 21, 1971, the local game here between the Miami Dolphins and the Baltimore Colts was blacked out all over southeastern Florida as per normal routine, (even though the game was sold out six days earlier.) This fact was well known and applies to all Dolphin home games.

However, there was also a second game blacked out all over southeastern Florida on the same afternoon—the nationally televised (CBS) game between Washington and Dallas, played in Washington, D.C. This second blackout was also imposed apparently to protect the gate receipts of the Miami Dolphins, which hardly needed protecting since it was sold out six days in advance.

Our local CBS television station, Channel 4, WTVJ, advised me when I inquired that (1) the Washington-Dallas game was being nationally televised from Washington, D.C., and (2) that whenever the Miami Dolphins played at home in Miami, TV Station WTVJ automatically blacked out their early Sunday afternoon telecast of a National Conference football game no matter where it was played. Since the Miami Dolphins' home games are automatically blacked out, this second TV blackout practically eliminates televised football in any important degree from the two million residents of southeast Florida.

I did not myself know until a few days ago that this second blackout has been taking place, owing primarily to a news blackout on this particular point inflicted upon us by our local newspapers, TV stations, and radio stations on behalf of the financial success of the Miami Dolphins. The blacked-out second game simply fails to appear on our TV schedules, without explanation.

The right to blackout the second game, played over a thousand miles away by two teams from other cities, virtually gives the Miami Dolphins control of our airwaves, and eliminates the FCC and the Federal Government in general who I believe should control the airwaves on behalf of the citizens.

Since we who reside in southeast Florida have been blacked out of three of the five Super-Bowl games played thus far, seem likely to be blacked out of at least half of the Super-Bowl games yet to come, are blacked out of both the Miami Dolphin game (American Conference) and one other important National Conference game whenever the Dolphins play at home, are blacked out of one other game when the Dolphins are on the road in order to televise the away-game here, it can be fairly stated that televised football has been eliminated to all intents and missing from the homes of two million southeast Florida residents, and that ours is the most blacked-out area of the whole United States. If this is not illegal, I am hoping something can be done to make it illegal.

Respectfully,

CARL W. ORLEMAN.

DECEMBER 16, 1971.

Mr. J. W. "BILL" STONE,
Post Office Box 9409,
Sacramento, Calif.

DEAR MR. STONE: This is in reply to your letter of December 10, 1971, concerning the television blackout of a professional football game in your area.

As you may know, the Commission is prohibited by law from censoring broadcast matter and it does not attempt to direct licensees in the selection or presentation of specific program material. Moreover, the telecasting of sports events is generally considered to be a private contractual matter between those having the broadcast rights to the events and the station or network carrying the broadcast. The television blackout of certain sports events is authorized under Sections 1291-1293 of Title 15 of the U.S.C., dealing with the exemption of certain television agreements from anti-trust laws. However, you may be interested to know that legislation has been introduced in the present session of Congress to amend these provisions.

Thank you for writing to the Commission.

Sincerely yours,

WILLIAM B. RAY,

Chief, Complaints and Compliance Division Broadcast Bureau.

SACRAMENTO, CALIF.,

December 10, 1971.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C.

GENTLEMEN: On Monday, December 6, the San Francisco 49'ers and the Kansas City Chiefs football game played in San Francisco was blacked out in this area.

I protest that a blackout is necessary and infringes on my rights when the game is in fact, a sellout. I agree that if the game is not a sellout that they are entitled to a blackout.

I hope that you will give some consideration to this matter whenever formulating on changing the rules.

Yours very truly,

J. W. "BILL" STONE.

NOVEMBER 29, 1971.

The TRIMMELL FAMILY,
Wheaton, Ill.

DEAR TRIMMELL FAMILY: Your letter of November 5, 1971, addressed to Action Seven, has been referred to this office for reply.

As you may know, the Commission is prohibited by law from censoring broadcast matter and it does not attempt to direct licensees in the selection or presentation of specific program material. Moreover, the telecasting of sports events is generally considered to be a private contractual matter between those having

the broadcast rights to the events and the station or network carrying the broadcast. The television blackout of certain sports events is authorized under Sections 1291-1293 of Title 15 of the U.S.C., dealing with the exemption of certain television agreements from anti-trust laws. However, you may be interested to know that legislation has been introduced in the present session of Congress to amend these provisions.

Thank you for your interest in this matter.

Sincerely yours,

WILLIAM B. RAY,
Complaints and Compliance, Broadcast Bureau.

ACTION SEVEN,
Chicago, Ill.

The enclosed letter was sent to Action 7.

We are forwarding the information to you for any comment, suggestion or answer you may have.

We would be grateful if you would directly inform the viewer of your response and send us a copy of that correspondence along with the enclosed original letter . . . or a copy of it.

Many thanks for your assistance.

Sincerely,

FRANK O. MATHIE.

NOVEMBER 5, 1971.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C.

DEAR FRANK: My family and I are big fans of the Chicago Blackhawks. We would like to know why the home games are blacked out. If the game is sold out, we think that the game should be televised. Do you know if the black out rule is going to be changed?

Thank you,

THE TRIMNELL FAMILY.

DECEMBER 28, 1971.

Mr. EDWARD C. LANE,
Campo, Calif.

DEAR MR. LANE: This is in reply to your letter of December 13, 1971, concerning the television blackout of a professional football game in your area.

As you may know, the Commission is prohibited by law from censoring broadcast matter and it does not attempt to direct licensees in the selection or presentation of specific program material. Moreover, the telecasting of sports events is generally considered to be a private contractual matter between those having the broadcast rights to the events and the station or network carrying the broadcast. The television blackout of certain sports events is authorized under Sections 1291-1293 of Title 15 of the U.S.C., dealing with the exemption of certain television agreements from anti-trust laws. However, you may be interested to know that legislation has been introduced in the present session of Congress to amend these provisions.

Thank you for writing to the Commission.

Sincerely yours,

ARTHUR L. GINSBURG,
Acting Chief, Complaints and Compliance Division, Broadcast Bureau.

CAMPO, CALIF.,
December 13, 1971.

CHAIRMAN,
*Federal Communications Commission,
Washington, D.C.*

SRS: Tonight, we rural T.V. viewers suffered one more indignity at the hands of urban America by being denied the Rams-Redskins game. What are you, the valiant guardians of our airwave rights going to do about it? My bet is, you'll do nothing, not one damned thing. That's what you're going to do about it!

Those fat-cat owners up in L.A. felt we ignorant hillbillies should drive the 150 miles through curving mountain roads, through driving winters rain, in order to see their supposed game of the year(?)—and so for the second time this year we ignorant hillbillies must watch in our—ONE STATION AREA—whatever junk, barf, and garbage the local, ignorant, ineffectual, ABC station chooses to belay us with.

When CATV is finally able to go into business, are you going to see to it, it be mandatory for them to service us poor slob in rural America? Again I say, I doubt it. Such an act would take the kind of guts not apparent from your commission.

The only kind of gutsy actions apparent in governmental slugs we rural Americans see in action, seems to be the having of another scotch and water.

Frustratedly,

EDWARD C. LANE.

DECEMBER 29, 1971.

Mr. JAMES R. TULL,
Philadelphia, Pa.

DEAR MR. TULL: Your recent telegram, addressed to President Nixon, has been referred to me for reply.

It should be explained that Sections 1291-1295 of Title 15, U.S.C., governs the telecasting of professional sports. In this regard, Section 1293 of the statute in effect prohibits the telecasting of league sponsored professional football games either on Saturday or Friday after 6 p.m. from the second Friday in September through the second Saturday in December by television stations located within 75 miles of the site of an intercollegiate or interscholastic game to be played on the same date. The purpose of this legislation is to protect high school and college football gate receipts from impairment. Thus, the telecasting of the Miami-Baltimore game by Philadelphia stations would have conflicted with the Board-walk Bowl which was of course being played on the same date less than 75 miles away in Atlantic City, New Jersey. However, you may be interested to know that legislation has recently been introduced which would amend these provisions.

I trust this information will serve to explain the Commission's position with respect to your complaint.

Sincerely,

DEAN BURCH, *Chairman.*

PHILADELPHIA, PA.

PRESIDENT RICHARD NIXON,
White House, Washington, D.C.

MY PRESIDENT: Please intercede NCAA-NFL blackout of Miami-Colt game. Fellow republican sportsfan.

JAMES R. TULL.

DECEMBER 1, 1971.

Mr. J. H. JACKSON, Jr.
Foster City, Calif.

DEAR MR. JACKSON: This is in reply to your letter of November 15, 1971, concerning the television blackout of a professional football game in your area.

As you may know, the Commission is prohibited by law from censoring broadcast matter and it does not attempt to direct licensees in the selection or presentation of specific program material. Moreover, the telecasting of sports events is generally considered to be a private contractual matter between those having the broadcast rights to the events and the station or network carrying the broadcast. The television blackout of certain sports events is authorized under Sections 1291-1293 of Title 15 of the U.S.C., dealing with the exemption of certain television agreements from anti-trust laws. However, you may be interested to know that legislation has been introduced in the present session of Congress to amend these provisions.

Thank you for writing to the Commission.

Sincerely yours,

WILLIAM B. RAY,

Chief, Complaints and Compliance Division, Broadcast Bureau.

HYATT HOUSE HOTELS,
November 15, 1971.

DIRECTOR,
*Federal Communications Commission,
Washington, D.C.*

DEAR SIR: For your information, ABC—in Los Angeles—"blacked out" a game to we tax-payers just because NFL's Pete Rozelle thought they could pick up

15-20 more ticket holders for his Monday nite football game in San Diego—on 11-15-71. Either “Sir” Pete is awfully bad in math—or he is smart in the latter and decided to see just how far geographically he could “black” out the game. Funny but—in any way you figure it LA to San Diego is only 131 miles—not 75. Possibly by next season—if they have any audience—the good ol’ charitable NFL will “black out” Denver games—to LA—because on a clear day “by way of satellite” one can see Denver channels too in LA.

How far are you going to let this monopoly go?

I'd be very interested in your answer.

Very trunly yours,

J. H. JACKSON, Jr.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., February 3, 1971.

LEE ENTERPRISES, INC.,
Mason City, Iowa

GENTLEMEN: This refers to the Commission's letter of inquiry and your reply dated December 18, 1970, regarding station KGLO-TV's reduction of power on November 22, 1970.

You state that permission to carry the November 22, 1970, Minnesota Viking-Green Bay Packer football game was granted by CBS only upon the understanding that television station KGLO-TV would reduce its power by 20%. Without notifying or requesting authority from the Commission, KGLO-TV, on November 22, 1970, deliberately operated its transmitter at 80% of its authorized power between the hours of 7:30 A.M. and 3:45 P.M. Although you state that similar reductions in power in order to carry future Viking games will not occur, you allege that the reduction of power and the lack of notification did not violate the provisions of section 73.689(b) of the rules.

Section 73.689(b) of the rules states, in pertinent part, that “*the operating power shall be maintained as near as practicable to the authorized power and shall not be less than 80 percent nor greater than 110 percent of authorized power . . .*,” except when it is technically impossible to attain authorized power [italics supplied]. Although this rule provides an operating tolerance of 80 to 110 percent to accommodate moment-to-moment variations such as might be caused by normal primary supply voltage changes, it was intended that television stations would closely monitor and make necessary adjustments in order to maintain their authorized power. Under no circumstances may the operating provisions incorporated in the rule be interpreted to mean that, except for unavoidable technical causes, intentional operation at other than the authorized power would be in compliance with the rule. Whenever a station desires to operate at reduced power for any reason, it must first secure authorization from the Commission.

It is clear that your deliberate reduction of power on November 22, 1970, constituted a violation of section 73.689(b) of the Commission's rules. However, in view of your explanation of the circumstances under which you reduced power, and your promise that similar reductions would not occur in the future, no further action is contemplated at this time.

Chairman Burch concurred and issued a statement. Commissioner Robert E. Lee, was absent. Commissioner Johnson dissented and issued a statement.

By direction of the Commission.

BEN F. WAPLE, *Secretary*.

CONCURRING STATEMENT OF CHAIRMAN BURCH IN RE LETTER TO
LEE ENTERPRISES, INC.

There's a great deal less there than meets the eye.—Anon.

For those readers in the east, south, central, and west, who peruse the prose of this Commission, the dissent of Commissioner Johnson issued this day in *Letter to Lee Enterprises, Inc.* was a little disappointing. As has become his custom in these matters, his rhetoric has outstripped the facts.

A casual reader of Commissioner Johnson's dissent could only conclude that (1) the monster of capitalism had again triumphed over a sleepy, overlyprotective Commission, and (2) only the clear-eyed protector of all that is right and proper was aware of this menace; and like the biblical voice in the wilderness is crying out to protect the public.

Let's examine the facts. There *is* a serious problem presented. An engineer probably would not use Commissioner Johnson's snappy title, "The Great Fuzz Out", since reducing a station's power 20% below its normal power would result in a location formerly having a field strength of 47 dbu being reduced 1 dbu (4.5%) and would draw in the predicted Grade B contour only very slightly (about 3% reduction in locations). However, there is no question but that such a reduction is wrong even if it affects only a relatively few viewers—and indeed, even if it affected a single viewer. Our rules provide for operation below normal power because of technical problems, and not to accommodate a football league or its contracting network.

From Commissioner Johnson's dissent, you would conclude that the Commission is indifferent to this problem. The fact is that the Commission, on its own motion and not that of Commissioner Johnson, decided on the following course of action:

- (1) It approved a letter prepared by the staff advising KGLO of its violation of the rule, and that no such violations were to occur in the future.
- (2) It directed that a letter be sent to CBS, stating that it shared in the blame for the violation and that no such violations of the rule should be promoted in the future.
- (3) It directed that a public notice be issued so that all licensees and networks will be aware of the requirements of the rule in this context.
- (4) It requested the staff to study generally the problem of sports black-outs, and the Commission's possible role, if any, in alleviating this problem.

These actions, as to CBS and the issuance of a public notice, apparently caught Commissioner Johnson by surprise. You would think that the text of his dissent would be revised greatly to deal with these significant new aspects. But no. Commissioner Johnson, being of the school that never lets new facts interfere with a good dissent, chose rather to add a footnote at the end of his dissent.

The footnote itself is most interesting. It states that issuing the public notice informing the broadcast industry of the rule's requirement in this context is just a "fillip" which only makes matters worse. This is baffling. Commissioner Johnson fears that there may be similar violations not known to us—and yet does not think it serves the public interest to give the widest currency to our action, so that all broadcasters will be made aware of their responsibilities in this respect.

The part of the footnote dealing with CBS is just as odd. It says that, first, news of our decision would undoubtedly have come to CBS's attention without our letter. In view of our public notice, that is true, but it misses the point. The Commission wanted CBS to know that part of the blame for KGLO's action clearly rested on the network.

But, says Commissioner Johnson, there are no sanctions against CBS, blithely ignoring the strictures of the Act which proscribe a forfeiture against CBS. What action then does Commissioner Johnson think the Commission should take against CBS? Would Commissioner Johnson move to revoke all or some of CBS's licenses on *this* ground? *Quelle homme! Quelle regulator!*

The only option open to the Commission which we did not take was to impose a forfeiture of \$1,000 or less upon KGLO-TV. The facts here show that on November 20, 1970, CBS notified KGLO-TV that it would not receive the scheduled Minnesota-Green Bay contest because of the ability to receive the signal in the Minneapolis area; that after several conferences between CBS and the station, it was agreed that KGLO-TV would receive permission to carry the Minnesota-Green Bay game provided the station reduced its power by 20%; that the licensee, in response to a December 8 letter from the Commission, advised us that prior to making its decision to reduce power, it attempted to contact its Washington legal or engineering counsel but was unable to do so, and that since it had publicized its carriage of the Green Bay game and since that particular game was a traditional rivalry of great interest to its viewers, it believed it was in the public interest to reduce power in order to carry the game; that on November 23, 1970, KGLO-TV consulted with its Washington attorneys and was advised that the thrust of the rule was primarily to satisfy technical problems, and that the licensee should either operate at normal power or refuse to carry Viking games at reduced power; and finally the licensee stated that, in the future, it will either operate at normal power or will refuse to carry Viking football games.

Of course we could have imposed a forfeiture on KGLO-TV. But I submit that reasonable men could also conclude that in these circumstances the letter was

sufficient and a forfeiture would seem a bit of an overkill. Possibly not a public relations overkill, but a judicial overkill. And the judicial function *is* the agency's task.

Well, enough of this tempest in a teapot, Grantland Rice once said, in effect, that it matters not whether you won or lost but rather how you played the game. On these facts, Commissioner Johnson (1) has not played the game well, and (2) does not even care about the score. I think that he should have passed rather than kicked. But then, would there have been any publicity in that?

[In re Letter to Lee Enterprises, Inc., Station KGLO-TV, Mason City, Iowa]

THE GREAT FUZZ OUT

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON

For those who live in east, south-central, and west Iowa, in the fringe area of the signal from KGLO-TV (CBS), Mason City, Iowa, the Sunday afternoon of November 22, 1970, was a little disappointing for the viewers who turned on their television sets to watch the Minnesota Viking-Green Bay Packer football game. The game is a regional classic that always generates great interest. But on this particular Sunday, KGLO's picture was more fuzzy than usual.

The disappointed viewers found out sometime later, when KGLO's embarrassed management apologized over the air, that KGLO had fallen victim to corporate pressure from Vikings management in Minneapolis, as well as the Columbia Broadcasting System, to take the rather extraordinary step of actually reducing the station's transmitter power by 20 percent.¹

The Vikings had their own well-being in mind. The commercial football interests wanted to make sure that football fans in south-central Minnesota, who had access to KGLO's signal, would have to pay gate prices at the stadium to watch the game in below-freezing temperatures rather than stay home by a cozy television set to watch the game for free. In short, the Vikings management was more than a little greedy in attempting to protect its central Minnesota blackout of the Packer game from KGLO's signal.

After some not-so-thinly-veiled threats that KGLO might lose the chance to televise the remaining Viking games, KGLO acquiesced and reduced its power—in violation of our rules, Sec. 37.689(b), which authorize reductions only in genuine technical emergencies but not for every whim that may serve commercial interests. See, *Iowa KGLO's Beaming of Minn. Grid In Backyard Is Not to Viking Liking; Iceland Hits Fans, Blackout a Bust*, Variety, Dec. 2, 1970, at 32.

My quarrel with the majority's decision today is that it does not focus the blame properly. We softly pat KGLO and CBS on the wrist; but on the premise that it won't happen again the Commission takes no further action.

I would think that it would at least be necessary for the Commission to impose a modest forfeiture to help drive home at least the *appearance* of a little more regard for the public interest in an instance of such a brazen rule violation.

The more serious lapse in the majority's letters, however, is the failure to recognize adequately the role of the Columbia Broadcasting System and the Vikings management in inducing KGLO's violation of our rules.² There is substantial evidence to suggest that the blackout, that barnacle on the soft underbelly of the commercial football establishment, is causing similar problems—and perhaps similar violations of our rules now unknown to the Commission—for our many television licensees who find themselves on the fringes of other National Football League cities. Some have become so outraged at the abuses occurring because of the television blackout that at least one state is considering legislation that would ban the blackout altogether. *Anti-TV Blackout Bill Urged*, Fort Lauderdale, Fla., News, Jan. 20, 1971, at 10-C.

Perhaps it is time for this Commission to formally ask the U.S. Department of Justice for a full-scale review of the blackout policy and the apparent abuses that have developed since the anti-trust exemption authorizing the blackout was adopted by Congress in 1961.

¹ Apparently management may also owe an apology to CBS and the Vikings. FCC staff informs us the station may have bungled its attempt and actually reduced power less than intended. Needless to say, that does not affect the intent of the Vikings, CBS, or KGLO-TV.

² After originally considering only the mild letter to KGLO, the Commission has now decided to make the empty gesture of sending CBS a letter as well. Needless to say, (1) news of our decision would undoubtedly have come to CBS' attention without our letter, and (2) no sanctions are contemplated. The latest fillip—to issue a "public notice" informing the industry generally of the Commission rule on power reduction (without, however, discussing the circumstances of this case.)—only makes matters worse.

Few contest the simple proposition that Big Sports and Big Broadcasting have coalesced into a powerful relationship worthy of detailed study, perhaps leading to recommendations for corrective legislation. Consider this summary of the current situation:

Sports ceased being a game and became big business as soon as tv became a major factor in the sports scene.

Television can simultaneously be sport's greatest booster and the instrument of its eventual downfall. It's common knowledge that the American Football League could not have survived were it not for the money the National Broadcasting Company poured into it. On the other hand, overexposure on tv was a major factor in the demise of boxing as a major sport in this country. Today there are at least four major league baseball franchises which would cease to exist were it not for money from tv contracts.

Every sports expansion in the last 10 years can be directly related to a tv market, with the prime example being the National Hockey League's expansion into six American cities (all in the same year). . . .

On a percentage basis, of all major sports, football has achieved the greatest rise in attendance and popularity. Football's tempo, speed, even its violence have attracted TV viewers in record numbers. Football, for some people, becomes a form of vicarious involvement in violence. For others, hidden aggression and frustration are released while watching a football game. Television's instant replay and stop-action techniques have contributed to the viewer's total involvement in the action. Football, through television, has created heroes with whom people identify. Joe Namath is the prime example of football's star system. His mystique and charisma has attracted large numbers of new viewers, especially from the distaff side. *Special Report on TV Sports Shows, Media Decisions*, January 1971, at 41-42.

Clearly, the rise of Big Sports and its intermarriage with Big Broadcasting has imposed on this Commission new duties to at least keep itself apprised of the trends and the new problems the changing times inevitably bring. Cf., Judge Girim's thorough opinion in *U.S. v. National Football League*, 116 F. Supp. 319 (E.D. Pa. 1953), cited in *In Re Akron Telcrama, Inc.*, 8 F.C.C. 2d 1127 (1967); *American Football League v. National Football League*, 205 F. Supp. 60 (D. Md. 1962).

There are serious questions as to whether the commercial football leagues and the television networks have over-stepped the limited boundaries the Congress set down in allowing for local "blackouts" of home professional games. The anti-trust exemption creating the blackout, P.L. 87-331, 75 Stat. 732 (1961), 15 U.S.C. 1291-95 (1964), was enacted to offset *U.S. v. National Football League*, 196 F. Supp. 445 (E.D.Pa. 1961), which had held that a league such as the National Football League was prohibited from entering into an agreement to sell the pooled television rights of its member clubs. In overruling the case, Congress passed an anti-trust amendment authorizing an area TV blackout of a game "within the home territory of a member club of the league on a day when such a club is playing a game at home."

While the blackout scheme has been generally approved by the courts, e.g., *Blaich v. National Football League*, 212 F. Supp. 319 (S.D.N.Y. 1962), many questions on its precise applicability have never been settled. Congressman Stubblefield of Kentucky has noted that it was Congress' intent that the blackout "be severely and strictly limited to the minimum degree." 109 Cong. Rec. 12135 (July 2, 1963). Nevertheless, there is every indication that the football interests and the networks have not held themselves strictly to the dictates of the legislation. The 75-mile radius of the blackout has now been enshrined as a basic tenet of the commercial football prerogative, even though the anti-trust exemption—or anything else, for that matter—does *not* give the blackout such wide latitude: the 75-mile radius is applied expressly to *college* football only. H.R. No. 1178, 87th Cong., 1st Sess. 1 (1961).

We in government, of course, are quite used to commercial broadcasting's prerogative of being a law unto itself. Nevertheless, this Commission could make an effective *start* at curbing the blackout abuse by at least serving stern notice—backed up by a forfeiture—that extreme tamperings like those in the KGLO case will not be tolerated in any way, and then following it up with *some* effort to ascertain and publicize the facts of this case and inquire into the full range of sports-TV abuse today.

I dissent.

(The following information was referred to on p. 98:)

UNITED STATES
v.
NATIONAL FOOTBALL LEAGUE et al.
No. 12308.

United States District Court,
E. D. Pennsylvania.

Nov. 12, 1953.

The United States of America brought action against the National Football League and football teams to enjoin enforcement of by-laws of the National Football League restraining televising and radio broadcasting of professional football games. The District Court, Grim, J., held that restriction preventing telecasting of outside games into home territories of other teams on days when other teams were playing at home was not illegal under the Sherman Act, but that restrictions on telecasting outside games in home territories when home teams were playing games away from home and telecasting them in their home territories, and restricting radio broadcasting of outside games in home territories on days when home teams were playing at home and on days when home teams were playing games away from home and were either televising or broadcasting them in their home territories were illegal, and that enforcement of by-law giving Football Commission power to prevent all television and radio broadcasts would be enjoined to prohibit Football Commissioner from exercising his power to disapprove contracts for purpose of effecting and maintaining illegal territorial restrictions.

Decree in accordance with opinion.

1. Monopolies ⇨12(6)

Where by-laws of the National Football League had been agreed to by all league members and were binding on all of them, the by-laws constituted a "contract" within meaning of provision of the Sherman Act that every "contract", combination, or conspiracy in restraint of trade or commerce among the several states is declared to be il-

legal. Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

See publication Words and Phrases, for other judicial constructions and definitions of "Contract".

2. Monopolies ⇨17(1)

An allocation of marketing territories for purpose of restricting competition is not always illegal under the Sherman Act. Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

3. Monopolies ⇨10

The Sherman Act calls for vigilance in detection and frustration of all efforts unduly to restrain free course of interstate commerce, but does not seek to establish a mere delusive liberty either by making impossible the normal and fair expansion of that commerce or adoption of reasonable measures to protect it from injurious and destructive practices and to promote competition on a sound basis. Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

4. Monopolies ⇨12(1)

Mere fact that parties to an agreement eliminate competition between themselves is not enough to condemn it under the Sherman Act. Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

5. Monopolies ⇨12(1.2)

The true test of legality under the Sherman Act of an agreement or regulation of trade is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

6. Monopolies ⇨12(1)

In order to determine legality of agreement or regulation of trade under the Sherman Act, court must ordinarily consider the facts peculiar to the business to which the restraint is applied, its condition before and after the restraint was imposed, the nature of the restraint, and its effect, actual or prob-

able. Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

7. Monopolies ⇨12(1)

In order to determine whether restraint is legal under the Sherman Act, history of restraint, evil believed to exist, reason for adopting the particular remedy, and purpose or end sought to be attained are all relevant facts. Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

8. Monopolies ⇨12(1.10)

An agreement may constitute a restraint of trade, without being illegal under the Sherman Act, and, for a contract to be illegal, it must cause both a restraint of trade and an unreasonable restraint of trade. Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

9. Monopolies ⇨12(1.10)

If restraints of trade are reasonable by common law standards, they are legal under the Sherman Act. Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

10. Courts ⇨361

In determining whether restraints of trade are illegal under the Sherman Act, federal rather than state decisions are controlling. Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

11. Monopolies ⇨12(6)

Provision of by-laws of the National Football League preventing telecasting of outside football games into home territories of other teams on days when other teams are playing at home provides for a legal restraint of trade not in violation of the Sherman Act. Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

12. Monopolies ⇨12(6)

Provision of by-law of the National Football League restricting telecasting of outside football games in home territories of teams when home teams are playing games away from home and telecasting them in their home territories, provides for an unreasonable and illegal restraint of trade under the Sherman Act. Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

13. Monopolies ⇨12(6)

Provision of by-law of National Football League restricting the broadcasting by radio of outside games in home-territories on days when home teams are playing at home and on days when home teams are playing games away from home and are either televising or broadcasting them in their home territories, provides for an illegal restraint under the Sherman Act. Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

14. Monopolies ⇨24(7)

Enforcement of provision of by-law of National Football League giving Football Commissioner power to prevent all television and radio broadcasts of football games, would be enjoined to prohibit Commissioner from exercising his power to disapprove contracts for televising and radio broadcasting of football games for purpose of effecting and maintaining territorial restrictions which are illegal under the Sherman Act. Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

15. Monopolies ⇨24(7)

Action by the United States of America under the Sherman Act against the National Football League and football teams to enjoin enforcement of provisions of by-laws of the National Football League limiting televising and radio broadcasting of football games was not required to be dismissed because professional football is allegedly not commerce or interstate commerce, since radio and television clearly are in interstate commerce and it is immaterial whether professional football is or is not commerce or interstate commerce. Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

William L. Maher, W. Wilson White, U. S. Atty., Philadelphia, Pa., W. Perry Epes, Alexandria, Va., Walter D. Murphy, John A. S. Riles, Barbara J. Svedberg, Washington, D. C., and Leonard R. Posner, Hartford, Conn., Department of Justice, for plaintiff.

Francis J. Myers, Thomas Hart, Cornelius C. O'Brien, Alfred W. Putnam, Harry Shapiro, Hirsch W. Stalberg, Philadelphia, Pa., Milton W. King, Bernard I. Nordlinger, Washington, D. C., for defendants.

GRIM, District Judge.

Article X of the by-laws of the National Football League provides that no club shall cause or permit a game in which it is engaged to be telecast or broadcast by a station within 75 miles of another League City on the day that the home club of the other city is either playing a game in its home city or is playing away from home and broadcasting or televising its game by use of a station within 75 miles of its home city, unless permission for such broadcast or telecast is obtained from the home club.¹ The evidence is uncontradicted that it is the general policy of the clubs to refuse to permit the broadcasting or televising of "outside games"² in their home territories and that such permission has seldom been granted. Most League games, particularly regular season games, are played on Sundays, and since the teams, when they are not playing at home, almost always either broadcast or televise their "away games"³ in their home territories, the restrictions of Article X effectively prevent "live" broadcasts or telecasts⁴ of practically all outside games in all the home territories.

The government has filed this action seeking an injunction against the enforcement of the provisions of Article

X, contending that they are illegal under the Sherman Act, 15 U.S.C.A. § 1 et seq., which provides:

"§ 1. Every contract, combination * * * or conspiracy in restraint of trade or commerce among the several states * * * is declared to be illegal * * *."

[1] The by-laws have been agreed to by all the League members and are binding upon all of them. They clearly constitute a contract within the meaning of the word as it is used in the Sherman Act. *Associated Press v. United States*, 326 U.S. 1, 8, 65 S.Ct. 1416, 89 L.Ed. 2013.

An analysis of the provisions of Article X and of the evidence pertaining thereto shows that Article X contains four basic provisions material to this anti-trust suit. (1) It prevents the telecasting of outside games into the home territories of other teams on days when the other teams are playing at home. (2) It prevents the telecasting of outside games into the home territories of other teams on days when the other teams are playing away from home and permitting the telecast of their games into their home territories. (3) It prevents the broadcasting by radio of outside games into the home territories of other teams both on days when the other teams are playing at home and on days when the other teams are playing away from home and are permitting the games to be broadcast or televised into their home territories. (4) It gives the Football Commissioner an unlimited pow-

particular home club and in which that home club is not a participant.

1. The following special provisions create exceptions to the general 75-mile rule: In the case of the Green Bay Packers the home territory includes all of Milwaukee County, which covers an area more than 75 miles from Green Bay. When League cities are within 100 miles of each other the territorial right of each extends to half the distance between the cities (e.g. New York and Philadelphia; Washington and Baltimore). Either club in Chicago (Cardinals or Bears) may permit broadcasting (but not telecasting) of its own games in Chicago without limitation.
2. An "outside game" is a game which is played outside the home territory of a

3. An "away game" is a game played by a particular home club outside of its own home territory.
4. "Live" telecasts are telecasts made simultaneously with the playing of the game as contrasted with movies of the game telecast subsequent to the playing of the game. "Live" broadcasts are radio broadcasts made simultaneously with the playing of the game as contrasted with sound recordings or transcriptions broadcast after the game has been played.

er to prevent any and all clubs from televising or broadcasting any or all of its or their games. Since the facts in reference to each of these provisions present somewhat different anti-trust law problems, they will be considered separately.

I.

Is the provision which prevents the telecasting of outside games into the home territories of other teams on days when the other teams are playing at home illegal?

There can be little doubt that this provision constitutes a contract in restraint of trade. The market for the public exhibition of football no longer is limited to the spectators who attend the games. Since the advent of television and radio, the visual and aural projections of football games can be marketed anywhere in the world where there are television or radio facilities to transmit and receive them. When a football team agrees to restrict the projection of its games in the home areas of other teams it thereby cuts itself off from this part of its potential market. Since the clubs of the National Football League have agreed at certain times not to project their games into the home territories of other clubs they have given that part of their market at those certain times exclusively to other teams. In return, each of them has been given the right to market its own games without competition in its own home area under the same circumstances. The purpose and effect of this is to restrict outside competition on the part of other teams in the home area of each club. This, therefore, is a clear case of allocating marketing territories among competitors, which is a practice generally held illegal under the anti-trust laws. *United States v. Addyston Pipe & Steel Co.*, 6 Cir., 85 F. 271, affirmed 175 U.S. 211, 20 S.Ct. 96, 44 L.Ed. 136; *United States v. Aluminum Co. of America*, 2 Cir., 148 F.2d 416, 427.

[2-7] An allocation of marketing territories for the purpose of restricting competition, however, is not always ille-

gal. There is no simple formula "to displace the rule of reason by which breaches of the Sherman Law are determined. Nor is 'division of territory' so self-operating a category of Sherman Law violations as to dispense with analysis of the practical consequences of what on paper is a geographic division of territory." *Timken Roller Bearing Co. v. United States*, 341 U.S. 593, 605, 71 S.Ct. 971, 978, 95 L.Ed. 1199 (dissenting opinion of Justice Frankfurter).

"The restrictions the act imposes are not mechanical or artificial. Its general phrases * * * call for vigilance in the detection and frustration of all efforts unduly to restrain the free course of interstate commerce, but they do not seek to establish a mere delusive liberty either by making impossible the normal and fair expansion of that commerce or the adoption of reasonable measures to protect it from injurious and destructive practices and to promote competition upon a sound basis. * * * Realities must dominate the judgment. The mere fact that the parties to an agreement eliminate competition between themselves is not enough to condemn it." *Appalachian Coals, Inc. v. United States*, 288 U.S. 344, 360, 53 S.Ct. 471, 474, 77 L.Ed. 825.

"The legality of an agreement or regulation cannot be determined by so simple a test, as whether it restrains competition. Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain, is of their very essence. The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect,

actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts. This is not because a good intention will save an otherwise objectionable regulation or the reverse; but because knowledge of intent may help the court to interpret facts and to predict consequences." *Chicago Board of Trade v. United States*, 246 U.S. 231, 38 S. Ct. 242, 244, 62 L.Ed. 683.

[8-10] An agreement may constitute a restraint of trade, but that does not necessarily mean that it is illegal. To be illegal a contract must cause both a restraint of trade and an unreasonable restraint of trade. *Standard Oil Co. of New Jersey v. United States*, 221 U.S. 1, 31 S.Ct. 502, 55 L.Ed. 619; *United States v. American Tobacco Co.*, 221 U.S. 106, 31 S.Ct. 632, 55 L.Ed. 663; *Appalachian Coals, Inc. v. United States*, 288 U.S. 344, 53 S.Ct. 471, 77 L.Ed. 825; *United States v. Columbia Steel Co.*, 334 U.S. 495, 68 S.Ct. 1107, 92 L.Ed. 1533.⁵

The principal question in the present case is whether the particular restraints imposed by Article X are reasonable or unreasonable.

Professional football is a unique type of business. Like other professional sports which are organized on a league basis it has problems which no other business has. The ordinary business makes every effort to sell as much of its product or services as it can. In the course of doing this it may and often does put many of its competitors out of

business. The ordinary businessman is not troubled by the knowledge that he is doing so well that his competitors are being driven out of business.

Professional teams in a league, however, must not compete too well with each other in a business way. On the playing field, of course, they must compete as hard as they can all the time. But it is not necessary and indeed it is unwise for all the teams to compete as hard as they can against each other in a business way. If all the teams should compete as hard as they can in a business way, the stronger teams would be likely to drive the weaker ones into financial failure. If this should happen not only would the weaker teams fail, but eventually the whole league, both the weaker and the stronger teams, would fail, because without a league no team can operate profitably.

It is particularly true in the National Football League that the teams should not compete too strongly with each other in a business way. The evidence shows that in the National Football League less than half the clubs over a period of years are likely to be financially successful. There are always teams in the League which are close to financial failure. Under these circumstances it is both wise and essential that rules be passed to help the weaker clubs in their competition with the stronger ones and to keep the League in fairly even balance.

The winning teams usually are the wealthier ones and unless restricted by artificial rules the rich get richer and the poor get poorer (as Commissioner

5. At this late date in anti-trust law history it is not necessary to discuss the reason why a restraint of trade is illegal only if it is unreasonable. It is sufficient to say that if restraints are reasonable by common law standards they are legal under the Sherman Act. Justice Stone put it this way in *Apex Hosiery Co. v. Leader*, 310 U.S. 469, at page 493, 60 S. Ct. 982, at page 995, 84 L.Ed. 1311: "This Court has * * * repeatedly recognized that the restraints at which the Sherman law is aimed, and which

are described by its terms, are only those which are comparable to restraints deemed illegal at common law". Although there is much state common law on the subject of which restraints of trade are reasonable, (See Restatement, Contracts, Secs. 513 to 519) under the federal anti-trust statutes federal rather than state decisions are controlling. Compare *Erie R. Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188, with *Sola Electric Co. v. Jefferson Co.*, 317 U.S. 173, 176, 63 S.Ct. 172, 87 L.Ed. 165.

Bell put it). Winning teams draw larger numbers of spectators to their games than do losing teams and from the larger gate receipts they make greater profits than do losing teams. With this greater wealth they can spend more money to obtain new players, they can pay higher salaries, and they can have better spirit among their players than can the weaker teams. With these better and happier players they will continue to win most of their games while the weaker teams will continue to lose most of their games. The weaker teams share in the prosperity of the stronger teams to a certain extent, since as visiting teams they share in the gate receipts of the stronger teams. But in time even the most enthusiastic fans of strong home teams will cease to be attracted to home games with increasingly weaker visiting teams. Thus, the net effects of allowing unrestricted business competition among the clubs are likely to be, first, the creation of greater and greater inequalities in the strength of the teams; second, the weaker teams being driven out of business; and, third, the destruction of the entire League.

In order to try to keep its teams at approximately equal strength and to protect weaker teams from stronger teams, a league theoretically might use a number of devices. It might (1) limit

the bonus price which could be paid to new players, (2) give the weaker teams a prior right over stronger teams to draft new players, (3) prohibit the sale of players after a certain day in the playing season, (4) limit the number of players on each team, (5) limit the total amount of salaries which a team can pay, (6) give the lowest team in the league the right to draft a player from the highest team, when and if the highest team has won a certain number (three for instance) of consecutive championships, and (7) reasonably restrict the projection of games by radio or television into the home territories of other teams.⁶

It is easy to see that the first six devices would make it easier for weaker teams to compete with stronger ones.⁷ The usefulness of the seventh device, however, in the protection of the weaker teams may not be so obvious, particularly since it prevents the weaker teams from televising into the home territories of the stronger teams as much as it prevents the stronger teams from telecasting into the home territories of the weaker ones. The evidence indicates that television audiences and sponsors have so little interest in games between weak teams that it is very difficult to obtain sponsors for outside telecasts of such games. Consequently, the weaker teams lose practically nothing by this television restriction. But they benefit

6. These devices may be necessary to protect teams in comparatively small cities in their competition with teams in larger cities, because of the advantage which the larger population areas give to teams in the larger cities. The history of professional football does not show this, but its history on a sound basis is so short (the ruinous competition with the All-America Conference ended only in 1951) that it is not very illuminating. The experience of professional baseball, however, is illuminating on this point. The professional baseball team which has the only American League franchise in the New York area, the New York Yankees, has dominated professional baseball so much in the last thirty years that most of the other teams no longer have any real hope of winning a championship. This is harmful to profession-

al baseball generally. Certainly it is not merely a coincidence that the professional baseball team which draws from a population area twice as large as its nearest competitor wins almost all the championships.

7. It should be made clear that the discussion relating to the first six protective devices and the note thereto is not based on evidence in the case and does not concern matters about which judicial notice can be taken. It is included for the purpose of pointing up professional football's very serious problem of maintaining a league of teams fairly equal in player strength and with a reasonable chance of operating at a profit. It provides a theoretical basis for an analysis of the seventh device, which, of course, is the subject matter of this case.

greatly from it in that the restriction adds to their home game attendance by preventing potential spectators from staying at home to watch on television exciting outside head-on games between strong teams. The competitive position of the weaker teams is improved by this increase in home attendance, while the competitive position of the stronger teams is weakened somewhat by their inability to sell to sponsors the right to televise their desirable head-on games into the home territories of the weaker teams when the weaker teams are playing at home.

A large part of defendants' evidence was directed to the question of whether the televising of a team's own home games⁸ in that team's home territory has an adverse effect on attendance at these home games. The evidence on this point, particularly the evidence relating to the great decrease in home attendance of the Los Angeles Rams during the 1950 season when all its home games were televised at home, shows quite clearly that the telecasting of a home game into a home territory while the home game is being played has an adverse effect on the attendance at the game. This clearly indicates by implication that the telecast of an outside game, particularly a head-on game, also adversely affects attendance at a home game.

That the telecast of outside games into home territories adversely affects the attendance at home games is shown also by the experience of college football teams. Telecasts of games on the day they are played drastically and adversely affect gate receipts in the home area of the club where the television spectacle is shown. This is true whether the game being televised is an outside game or a home game as is shown by the National Opinion Research Center's studies. These studies are based solely upon data relating to the experience of college football with television, and because the testimony reveals some deficiencies in the methods pursued by the N. O. R. C.

in making its studies and interpreting its data, its conclusions cannot be taken at full face value. However, the conclusions in these reports concerning the adverse effect of telecasts of college outside games on attendance at college home games do indicate that the telecasting of outside professional football games would have a similar adverse effect upon attendance at home games of the professional teams.

The greatest part of the defendant clubs' income is derived from the sale of tickets to games. Reasonable protection of home game attendance is essential to the very existence of the individual clubs, without which there can be no League and no professional football as we know it today.

This is not a case of one industry fighting the competition of another, as for instance coal fighting the competition of oil, or railroads fighting the competition of trucks, or moving pictures fighting the competition of television. Football provides a magnificent spectacle for television programs and television provides an excellent outlet and market for football. They both can use and indeed need each other. By working together intelligently each will be an important adjunct to the other. The objective of the clubs in agreeing to a television blackout of the home territory (except for the remote possibility of a home game telecast) during the day a home game is played is not to restrain competition among the individual clubs in the sale of television rights or competition among television stations and networks and advertisers and advertising agencies in the purchase of such rights. This particular restriction promotes competition more than it restrains it in that its immediate effect is to protect the weak teams and its ultimate effect is to preserve the League itself. By thus preserving professional football this restriction makes possible competition in the sale and purchase of television rights in

8. There is no restriction on the right of each club to permit the telecast or

broadcast of its own home games into its home territory.

situations in which the restriction does not apply.

[11] The purposes of the Sherman Act certainly will not be served by prohibiting the defendant clubs, particularly the weaker clubs, from protecting their home gate receipts from the disastrous financial effects of invading telecasts of outside games. The member clubs of the National Football League, like those of any professional athletic league, can exist only as long as the league exists. The League is truly a unique business enterprise, which is entitled to protect its very existence by agreeing to reasonable restrictions on its member clubs. The first type of restriction imposed by Article X is a reasonable one and a legal restraint of trade.

Is the restriction on telecasting outside games in home territories when the home teams are playing away games and telecasting them in their home territories illegal?

The reasonableness of this particular restriction⁹ must also be tested by its effect on the attendance and gate receipts of a team's home games. It is obvious that on a day when the home team is playing an away game there is no gate attendance to be harmed back in its home area and the prohibition of outside telecasts within its home area cannot serve to protect gate attendance at the away game, which is played in the opponent's home territory.

Several of defendants' witnesses attempted to justify the restriction with

the opinion that it is necessary in this situation to protect the home team's "good will" by which they meant that the restriction is necessary to protect the home team from loss in gate receipts at subsequent home games. However, there is not one shred of evidence, not one specific example based on actual experience, to support this opinion which, more accurately stated, is nothing more than conjecture.

It is probably true, though not proved by the evidence, that the simultaneous telecasting of an outside game and an away game in the home area of the team playing away would result in a division of the television audience between the two games. Obviously the existence or the prospect of such competition would make the television rights to the home club's away games less attractive to sponsors and consequently less profitable to the club.¹⁰ But this does not concern attendance at football games. Indeed, the testimony of defendants' witnesses consistently indicates that the primary reason for the restrictions in this situation actually is to enable the clubs in the home territories to sell monopoly rights¹¹ to purchasers of television rights to away games.

[12] The record in this case contains no factual justification¹² for Article X's suppression of competing telecasts of League games when, for example, the Philadelphia Eagles' away game is being televised in its home territory. Defendants' speculation or conjecture that without such restriction gate attendance

9. This restriction, like the first and third restrictions, constitutes an allocation of marketing territories.

10. It is undoubtedly true, though again not proved by the evidence, that the telecasting of an outside game in a home territory would attract listeners from the broadcast of the home club's away game and thus make the broadcast rights to the away game less valuable to sponsors and the club.

11. "Monopoly rights" in this context may be defined as the right granted to a purchaser to be not only the exclusive telecaster of away game in the home

team's territory, but also the right to be the only telecaster of any League game, regardless of the participants, on days when the away games are being played and televised back into the home territory.

12. The Government contends that an agreement which allocates marketing territories is a violation per se of the Sherman Act. With this contention I disagree. However, such an agreement, in my opinion, is prima facie a violation of the Act and it puts upon the defendants the burden of sustaining by evidence the reasonableness of the restraint of trade.

would decline a week or two later at the Eagles' home game has little probative value. Article X's restriction on this type of competition is an unreasonable and illegal restraint of trade.

III.

Is the restriction of the broadcasting by radio of outside games in home territories on days when the home teams are playing at home and on days when the home teams are playing away games and are either televising or broadcasting them in their home territories illegal?

[13] There is no evidence whatsoever indicating any adverse effect of radio broadcasts of outside games in the home territory of another club. Since each of the defendant clubs permits the broadcasting in its home area of all of its own games (both away games and home games), it is apparent that none of them feels that such broadcasts have any significant adverse effect on gate attendance at their own games. Indeed, the evidence indicates that broadcasts of outside games when there is no home game have a stimulating effect on attendance at home games because of the interest thereby created in professional football generally. Granting monopoly rights to broadcasts of away games (that is, the right to broadcast away games in the home territory coupled with the suppression of competition from "outside" broadcasts or telecasts) enhances the value of such rights to purchasers, but has no significant effect on attendance at football games. There is no factual justification for Article X's territorial restrictions on the sale of radio broadcasting rights. Therefore, they are illegal under the Sherman Act.

IV.

Is the power of the Football Commissioner to prevent all television and radio broadcasts of games illegal?

The fourth type of restriction imposed by Article X appears in the section which provides as follows:

"Section 1. Any contract entered into by any club for telecasting or

broadcasting its games shall be subject to the conditions that:

"(a) The sponsor, the contract itself and the broadcasters who telecast or broadcast such games must have the written approval of the Commissioner of the National Football League."

[14] The decision of the Commissioner in approving or disapproving contracts for the sale of radio and television rights is final, binding, conclusive and unappealable. Thus this section gives the League Commissioner, an employee of the League, unlimited and arbitrary power to prevent the broadcasting and televising of any and every game. He need assign no reason for his action. By virtue of his power to disapprove any and all contracts for the sale of radio and television rights he has the power to set up and enforce the very same restrictions hereinbefore held to be illegal. Therefore, it is apparent that the Commissioner must be prohibited from exercising his veto power over contracts for the purpose of maintaining and enforcing these illegal territorial restrictions. Unless his power is limited in this manner, it would be a futile act for the Court to enjoin these illegal restraints. Accordingly, the enforcement of Section 1(a) of Article X will be enjoined in such a way that the Commissioner will be prohibited from exercising his power to disapprove contracts for the purpose of effecting and maintaining the territorial restrictions hereinbefore held to be illegal.

[15] Defendants contend that the action against them must be dismissed because professional football is not commerce or interstate commerce. This contention must be rejected. Radio and television clearly are in interstate commerce. *Lorain Journal Co. v. United States*, 342 U.S. 143, 72 S.Ct. 181, 96 L. Ed. 162; *Allen B. Dumont Laboratories v. Carroll*, 3 Cir., 184 F.2d 153. The restrictions by professional football on the sale of radio and television rights impose substantial restraints on the television and radio industry. Since the

League by-laws restrict substantially something which is in interstate commerce it is immaterial whether professional football by itself is commerce or interstate commerce. *Mandeville Island Farms v. Crystal Sugar Co.*, 334 U.S. 219, 68 S.Ct. 996, 92 L.Ed. 1328; *United States v. Frankfort Distilleries*, 324 U.S. 293, 65 S.Ct. 661, 89 L.Ed. 951; *United States v. Crescent Amusement Co.*, 323 U.S. 173, 183, 65 S.Ct. 254, 89 L.Ed. 160. On this problem the Supreme Court has said in *United States v. Women's Sportswear Ass'n*, 336 U.S. 460, at page 464, 69 S.Ct. 714, at page 716, 93 L.Ed. 805:

"The trial court appears to have dismissed the case chiefly on the ground that the accused Association and its members were not themselves engaged in interstate commerce. This may or may not be the nature of their operation considered alone, but it does not matter. Restraints, to be effective, do not have to be applied all along the line of movement of interstate commerce. The source of the restraint may be intrastate, as the making of a contract or combination usually is; the application of the restraint may be intrastate, as it often is; but neither matters if the necessary effect is to stifle or restrain commerce among the states. If it is interstate commerce that feels the pinch, it does not matter how local the operation which applies the squeeze."

I am not unmindful of the decisions of the Supreme Court in *Federal Baseball Club v. National League*, 259 U.S. 200, 42 S.Ct. 465, 66 L.Ed. 898, and in the very recent cases, decided November 9, 1953, of *Toolson v. New York Yankees, Inc.*, (*Kowalski v. Chandler*, and *Corbett v. Chandler*), 73 S.Ct. 78. In those baseball "reserve clause" cases the Court dismissed anti-trust suits against the major professional baseball leagues on the theory that big-league baseball is a sport, local in its nature, and not interstate commerce. The only restriction alleged in the baseball cases was in the

internal operation of professional baseball itself. The only question involved in those cases was whether professional baseball itself is interstate commerce. No question of restrictions on the sale of radio and television rights was involved in those cases. The present case, on the other hand, primarily concerns restrictions imposed by the National Football League on the sale of radio and television rights. Therefore, the present case basically concerns the League's restraint of interstate commerce in the radio and television industries. It is obvious that whether professional football itself is or is not engaged in interstate commerce is immaterial in the present case and that the decisions in the baseball cases referred to do not control the present case.

V.

Findings of Fact.

Article X of the by-laws of the National Football League (as in force since 1951) provides:

"Section 1. Any contract entered into by any club for telecasting or broadcasting its games shall be subject to the conditions that:

"(a) The sponsor, the contract itself and the broadcasters who telecast or broadcast such games must have the written approval of the Commissioner of the National Football League;

"(b) Any broadcaster may be removed by the Commissioner for conduct considered by the Commissioner as detrimental to the National Football League or professional football;

"(c) The Constitution and By-Laws of the National Football League as the same may be from time to time amended, shall be a part of said contract.

"Section 2.

"(a) Subject to the limitations herein set forth, teams participating in any game, are authorized to telecast and broadcast the same;

"(b) No club shall cause or permit a game in which it is engaged, to be telecast or broadcast into any area included within the home territory of any other club, without the consent of such other club, on the day that such other club is:

"(i) Engaged in playing a game at home or

"(ii) Engaged in playing a game away from home, and causing or permitting telecast or broadcast of that game within its home territory.

"(iii) No club shall telecast in territory in which said game is played without the consent of the home club, the visiting club, and the Commissioner of the National Football League.

"(c) Notwithstanding the foregoing restriction:

"(i) Either club in Chicago may in Chicago permit or cause broadcasting (but not telecasting) of its own games without limitation;

"(ii) Either club in New York may in New York permit or cause broadcasting (but not telecasting) of its own games without limitation.

"(d) No club shall accept or receive compensation of any kind whatever as consideration for a grant of the consent referred to in subsection (b) hereof.

"Section 3. Each League club hereby grants to each other League club, when such other club is the visiting club, the right to telecast and broadcast games in which the visiting club participates, from a station or stations within the home territory of such visiting club.

"Section 4. The sale of radio and television and film rights for the World Championship Game between the winners of the American Conference and the National Conference shall be under the sole jurisdiction of the Commissioner except that:

"(a) The home club may broadcast on a non-exclusive basis by radio locally only, within the home

territory of said club, provided said club pays into the player pool a sum equal to one-twelfth ($\frac{1}{12}$) of the total amount paid for the radio and television rights of that club for that season and the Commissioner approves the sponsor, and broadcasters;

"(b) The visiting club may telecast and broadcast on a nonexclusive basis within the home territory of said club, provided said club pays into the player pool a sum equal to one-twelfth ($\frac{1}{12}$) of the total amount paid for the radio and television rights of said club for that season and the Commissioner approves the sponsor and broadcasters.

"Section 5. Each club when playing at home shall provide adequate space for use of the visiting club in telecasting or broadcasting each game, if the visiting club shall so request.

"Section 6. The player grants to the club controlling his contract and to the National Football League severally and jointly the privilege and authority to use his name and/or picture for publicity and/or advertising purposes in newspapers, magazines, motion pictures, game programs and annual roster manuals, radio material, television telecast, and all other publicity and/or advertising mediums providing such publicity and/or advertising does not in itself constitute an endorsement by that individual player of a commercial product."

The statements of fact contained in the opinion will constitute the Court's findings of fact in the case.

The following of plaintiff's requests for findings of fact are affirmed and adopted as the Court's additional findings of fact in the case: Nos. 1 to 5, inclusive; No. 6, except for the first sentence; Nos. 7 to 17, inclusive; No. 18, except for that part of the first sentence following "In 1951"; No. 19, except for the first sentence which is ambiguous; Nos. 20 to 25, inclusive, Nos. 27 to 35, inclusive.

All the other requests by plaintiff for findings of fact are denied.

The following of defendants' requests for findings of fact are affirmed and adopted as the Court's additional findings of fact in the case: No. 1; Nos. 3 to 9, inclusive; Nos. 13 and 14; No. 21, but with "appropriate" underlined; No. 46, with the reservation that it does not state all the purposes of Article X, Nos. 47 to 50, inclusive; No. 53, except for the last sentence; and No. 55.

All the other requests by defendants for findings of fact are denied.

VI.

Conclusions of Law.

The statements of law contained in the Opinion will constitute the Court's conclusions of law in the case.

The following of plaintiff's requests for conclusions of law are affirmed and adopted as the Court's additional conclusions of law in the case: Nos. 1 and 5. The others are denied.

The following of defendants' requests for conclusions of law are affirmed and adopted as the Court's additional conclusions of law in the case: Nos. 1, 4, 10, 14 and 18.

All the other requests by defendants for conclusions of law are denied (No. 13 for being ambiguous).

If there are any inconsistencies between the requests which have been affirmed and adopted and the findings of fact and conclusions of law appearing in the Opinion, those contained in the Opinion shall govern.

VII.

Accordingly, a decree may be entered dismissing plaintiff's claim for injunctive relief with respect to Article X's restriction on the telecast of outside games into a club's home territory when that club is playing at home, and enjoining the following illegal activities authorized by Article X:

(1) The restriction of the sale of rights for the telecasting of outside games in a club's home territory on a day when the home club is permitting the

telecast of its away game in its home territory; (2) All territorial restrictions on the sale of radio broadcasting rights; and (3) The exercise of the Commissioner's power under Article X to disapprove contracts for the purpose of effecting the same two types of illegal restrictions mentioned in this paragraph.

Each side will submit a proposed decree within thirty days of the filing of this Opinion.



UNITED STATES of America,
Plaintiff,

v.

NATIONAL FOOTBALL LEAGUE et al.,
Defendants.

Civ. A. No. 12808.

United States District Court
E. D. Pennsylvania.

July 20, 1961.

Proceeding on petition by professional football league and others for a construction of a final judgment which prohibited the defendants from making any agreement with the league, or any member club which would have the purpose or effect of restricting areas within which broadcasts or telecasts of games may be made. The District Court, Grim, J., held that the contract between the league and the broadcasting system which granted to the broadcasting system the exclusive right to televise all league games, with certain exceptions, and which gave broadcasting system the sole right to determine which games shall be telecast and where televised, violated judgment.

Order accordingly.

Monopolies Ⓒ24(16)

Contract between professional football league and broadcasting system which gave broadcasting system sole

right to televise all league games, with certain exceptions, and which gave system sole right to determine which games shall be telecast and where such games shall be televised, violated final judgment which prohibited defendant league and clubs from making any agreement with league or member club having purpose or effect of restricting areas within which broadcasts or telecasts of games may be made. Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

Walter E. Alessandrini, U. S. Atty., Donald G. Balthus, Acting Chief, Middle Atlantic Office, Antitrust Division, Philadelphia, Pa., for plaintiff.

Francis W. Sullivan, Strong, Sullivan, Saylor & Ferguson, Thomas Hart, Cornelius C. O'Brien, Jr., Alfred W. Putnam, Harry Shapiro, Hirsh W. Stalberg, Philadelphia, Pa., for defendants.

GRIM, District Judge.

Defendants have filed a petition¹ seeking a construction of the final judgment entered in this case on December 28, 1953, to the effect that a contract dated April 24, 1961, between the National Football League and the Columbia Broadcasting System does not violate the final judgment. The government contends that the contract does violate the judgment. The 1961 contract grants to CBS for a period of two years the sole and exclusive right to televise all League games, with certain limited exceptions.² After certain deductions the League will distribute equally among the fourteen teams which now comprise the League the \$4,650,000 annual license fee to be paid under the contract. The government opposes the petition and by a cross-peti-

tion seeks restoration of the situation as it existed prior to the execution of the contract, (called, in the cross-petition, restoration of the status quo ante).

The government originally commenced this action by filing a complaint on October 9, 1951, charging that the defendant clubs of the National Football League, and the League itself, combined and conspired to violate the Sherman Anti-Trust Act, 15 U.S.C.A. § 1 et seq. After trial, the court filed an opinion dated November 12, 1953, D.C., 116 F.Supp. 319, finding that certain League by-laws did and certain by-laws did not violate the Sherman Act. A judgment was entered accordingly. It is this judgment that defendants seek to have construed.

Defendants concede that the 1961 NFL-CBS contract marks a basic change in National Football League television policy. Prior to this contract each member club individually negotiated and sold the television rights to its games to sponsors or telecasters with whom it could make satisfactory contracts. The NFL-CBS contract sharply departs from this practice. It is implicit in the 1961 contract that the member clubs have agreed among themselves and with the League that each club will not sell its television rights separate and apart from those of the other clubs, but that each club will pool its television rights with those of all of the other clubs, and that only the resulting package of pooled television rights will be sold to a purchaser. The clubs authorized the Commissioner of the League to sell this package of pooled television rights, and under the provisions of the 1961 contract with CBS he sold it. Thus, by agreement, the member clubs of the League have eliminated competition among them-

1. In accordance with Section XIII of the Final Judgment, retaining jurisdiction to enable parties to apply "for such further orders and directions as may be necessary or appropriate for the construction * * * of any of the provisions of this Final Judgment * * *"

2. Not included are (1) the rights to televise the World's Championship Profes-

sional Football Game between the winners of the championship of each division of the League and (2) a small number of certain other post-season and pre-season games, the net proceeds of which are allocated to the participating players, the League's Player Pension Fund or to charity. Generally speaking, the contract permits CBS to decide which games shall be telecast.

selves in the sale of television rights to their games.

Section V of the Final Judgment enjoins³ the defendants from making any agreement with the League or any member club.

" * * * having the purpose or effect of restricting the areas within which broadcasts or telecasts of games * * * may be made * * * "

As defendants state in their petition for construction:⁴

"Said contract provides that the network [CBS] shall have the right to determine, entirely within its own discretion without consulting the Commissioner or any club of the League which games shall be telecast and where such games be

televised * * * " ⁵

Clearly this provision restricts the individual clubs from determining "the areas within which * * * telecasts of games * * * may be made * * *," since defendants have by their contract given to CBS the power to determine which games shall be telecast and where the games shall be televised. I am therefore obliged to construe the Final Judgment as prohibiting the execution and performance of the contract dated April 24, 1961, between the National Football League and the Columbia Broadcasting System.

The government may submit an order in accordance with this opinion construing the final judgment and/or ruling on the petition to restore the status quo ante.

3. With provisos not pertinent here.

4. While the contract does not appear in the record, this part of the contract and this construction of it is not disputed by the parties. Nor is there a dispute as to the other provisions of the contract mentioned in this opinion.

5. There were certain limiting restrictions, not pertinent here, such as that no games should be telecast in the home territory of a club without the consent of such clubs, when such clubs were playing at home.

PROFESSIONAL FOOTBALL TELECASTS AND THE BLACKOUT PRIVILEGE

In 1961 Congress granted professional sport leagues two exemptions from the sanctions of the antitrust laws.¹ One exemption authorized agreements between professional sport leagues and television networks to pool and sell as a package the rights to televise league games.² Such an agreement may not restrict telecasts of games in any area, "except within the home territory of a member club of the league on a day when such club is playing a game at home."³ This "home territory" exception is the second antitrust exemption. It authorizes the restriction of game telecasts in the area surrounding the site of a game—the blackout.⁴

Difficulties with the definition and administration of blackouts of professional football games have caused recent controversy.⁵ In addition, the economic circumstances of professional football have changed dramatically since the exemptions were enacted.⁶ These developments

¹ Act of Sept. 30, 1961, Pub. L. No. 87-331, 75 Stat. 732 (codified in 15 U.S.C. §§ 1291-95 (1970)).

² 15 U.S.C. § 1291 (1970). See note 13 and accompanying text *infra*. The agreements eliminate competition among league "businesses" for the sale of game television rights, but are exempted from antitrust consequences because competition among the teams might threaten the survival of the league:

The purpose of this bill is to permit professional sports leagues to deal jointly in the sale of their TV rights and, by grouping their weaker and stronger clubs and those clubs with greater or lesser home territory population, to provide equal access to television facilities and television income for all member clubs of their league.

107 CONG. REC. 20,662 (1961) (remarks of Senator Hruska).

³ 15 U.S.C. § 1292 (1970). Section 1293 protects intercollegiate football gate receipts by making section 1291 inapplicable to agreements permitting Friday night or Saturday professional football telecasting within 75 miles of an intercollegiate game site. A 1966 amendment gave this protection to interscholastic games as well. Section 1291 was amended at the same time to protect the merger of the American and National Football leagues from antitrust consequences.

Section 1294 provides that all professional sports activities other than those specifically enumerated in sections 1291-93 shall remain unaffected by the exemptions.

⁴ Section 1292 removes the antitrust exemption for agreements prohibiting the telecasting of games in any area, except in the home territory when a team plays a home game. Thus the section allows agreements to black out telecasts of the home game itself, within the home territory, and of outside games between other teams, neither of which is the home team. The term "blackout" has often been used to refer to both of these situations, although they are not identical and have significantly different antitrust consequences. See notes 11-25 & 55 *infra*. The terms "home game blackout" and "outside game blackout" will be used here to distinguish the two types of blackouts.

⁵ See notes 22-25 & 40 and accompanying text *infra*.

⁶ See notes 56-62 and accompanying text *infra*.

indicate that the purposes and validity of the blackout privilege should be reconsidered.⁷

I

THE ORIGIN AND CURRENT STATUS OF THE BLACKOUT PRIVILEGE

A. *Legislative History*

The antitrust exemption for agreements to televise professional sports⁸ was extended to the four major team sports at the time of its enactment.⁹ However, it was the predicament of the National Football League (NFL), confronted with two decisions by Pennsylvania Federal District Court Judge Allan K. Grim, that actually precipitated the Congressional action.¹⁰ Judge Grim first considered the broadcasting and television bylaws of the NFL in 1953¹¹ and found many of them to

⁷ The sports telecasting provisions were enacted in recognition of the substantial interest the American public has in viewing professional team sport contests. See 107 CONG. REC. 20,059-63, 20,662 *passim* (1961). The provisions further the public interest in two ways. First, they allow more of the public to see games by causing more games to be televised. See note 67 *infra*. Second, they provide individual teams with a means to achieve the financial stability necessary to their survival. See note 2 *supra*.

The first exemption, which allows pooled television rights agreements, causes more games to be televised because the league can make a network cover the games of *all* league members, not just of those whose talent or television markets are most attractive to the network. The league itself is financially strengthened because the proceeds from the sale of television rights are divided among the several league clubs.

The second exemption, the blackout, ensures team financial stability to the extent that it protects gate revenues. *But cf.* note 18 *infra*. By definition, however, it directly limits the number of fans reached by a televised game. Compare notes 56-62 and accompanying text *infra*, with notes 22-43 and accompanying text *infra*.

⁸ The uncertainty and confusion in both the courts and the Congress as to the applicability of the antitrust laws to professional sports must be kept in mind in considering Congress's enactment of the 1961 sport telecasting provisions. In *Toolson v. New York Yankees, Inc.*, 346 U.S. 356 (1953), the Supreme Court reaffirmed its ruling in *Federal Baseball Club v. National League*, 259 U.S. 200 (1922), that professional baseball was not subject to the antitrust laws. Then, in *Radovich v. National Football League*, 352 U.S. 445 (1957), the Court ruled that professional football *was* subject to the antitrust laws. Admitting that such discrimination between the sports was probably illogical and inconsistent, the Court concluded that the problem was not one for solution by judicial decision. It suggested that Congress should delineate the appropriate antitrust position of professional sport enterprises after an examination of the entire business. *Id.* at 451-52. More than 60 bills have been introduced in attempts to reach Congressional agreement on the matter, but no comprehensive legislation has been passed. For a representative history of these efforts, see S. REP. NO. 462, 89th Cong., 1st Sess. 4-11 (1965).

⁹ Section 1291 exempts baseball, basketball, football, and hockey. Professional soccer, which finished its first season in 1967, should probably now be included in this group.

¹⁰ See 107 CONG. REC. 20,059 (1961); notes 12-13 *infra*.

¹¹ In 1953 each NFL team individually contracted for the sale of its television rights.

be in violation of the antitrust laws. He did, however, extend a limited blackout privilege to football.¹² In 1961, in a proceeding initiated by the NFL for a construction of his 1953 order, he voided a pooled television rights contract between the NFL and the Columbia Broadcasting System as repugnant to the provisions of the 1953 decree.¹³ The 1961 decision, handed down July 20, caused "widespread anxiety among fans of professional football . . . that televised professional games [might] be severely restricted [in the] fall."¹⁴

Congress acted quickly to give the NFL legislative relief.¹⁵ Bills

The "home game" blackout was considered the privilege of a producer of entertainment not to offer for free in the same locality the very entertainment for which the public was being asked to buy tickets. It was not in issue in the 1953 case. See note 12 *infra*. The "home game" blackout is arguably an antitrust violation today. See note 55 *infra*.

¹² United States v. National Football League, 116 F. Supp. 319 (E.D. Pa. 1953). The Justice Department had filed suit alleging that NFL bylaws, binding upon all league members, restricting telecasts and radio broadcasts of league games constituted a contract in restraint of trade which violated the Sherman Antitrust Act (15 U.S.C. §§ 1-7 (1970)). All restrictions on radio broadcasts and a restriction on the telecasting of other football games into the home territory of a team that was playing away but telecasting its own game back to the home territory were declared illegal. The NFL Commissioner's veto power over individual team's television agreements was limited to effect these restrictions. Although Judge Grim did not doubt that the "outside game" blackout restrained trade (116 F. Supp. at 322), he applied the antitrust "rule of reason" and found it to be a reasonable, and therefore legal, restraint. *Id.* at 326.

¹³ United States v. National Football League, 196 F. Supp. 445 (E.D. Pa. 1961). By a provision in the judgment decree of the 1953 decision, Judge Grim retained jurisdiction of the case for the purpose of enabling the parties to petition for construction of the final decree. The NFL petitioned to have the judgment construed so as to accommodate the contract it had entered with CBS, which gave the network the exclusive right to televise league games for two years and permitted CBS to decide which games would be televised. Prior to this contract, each NFL club had individually negotiated the sale of its own television rights (see note 11 *supra*), so the 1961 pooled rights agreement was a significant change in the television policy of the league. Judge Grim felt the contract violated his 1953 judgment because the league members' agreement to eliminate competition among themselves in the sale of television rights, coupled with the network's contractual right to control telecasts, would operate to restrict the areas to which telecasts might be transmitted.

¹⁴ 107 CONG. REC. 15,223 (1961). The alarm was premature because the NFL clubs had individually negotiated contracts in force which provided for telecasts of the 1961 season games. *Hearings on H.R. 8757 Before the Antitrust Subcomm. of the House Comm. on the Judiciary*, 87th Cong., 1st Sess., ser. 13, at 4-5 (1961) [hereinafter cited as *TV Hearings*]. Before the "pooled" contract was disapproved, only CBS had enforceable options affecting 1961 games. These options involved "9 or 10" clubs, and CBS was willing to sign the "pooled" contract to get the exclusive telecast rights for all 14 league members. *Id.* at 33-34.

¹⁵ The relation of professional team sports and antitrust laws was not a new subject of concern when Congress acted on the matter of professional football telecasts. Prior to Judge Grim's 1961 order, both the House and Senate Judiciary Committees had investigated the subject, and a bill to limit the applicability of the antitrust laws to professional

were introduced in the House and Senate granting professional sport leagues the pooled television rights exemption.¹⁶ The blackout exemption¹⁷ was added by amendment to the House bill.¹⁸

Only seventy-two days after Judge Grim's decision that the NFL's pooled television rights contract violated the antitrust laws, such contracts were granted antitrust immunity, and the judicial blackout privilege became a legislative blackout privilege.¹⁹ Although neither all

team sports was before the Senate. S. 1856, 87th Cong., 1st Sess. (1961). Congress, however, failed to act on this proposal. See note 8 *supra*.

¹⁶ S. 2427, H.R. 8757, 87th Cong., 1st Sess. (1961).

¹⁷ See *TV Hearings* 31.

The pooled rights exemption was intended to provide more sports telecasts for the viewing public and to place the individual NFL clubs in comparable financial positions vis-à-vis television revenues. See notes 2 & 7 *supra*. Standing alone, however, this exemption would have granted "to the sports involved unchecked power to deprive the American public of the right to see over TV any sports contest." *TV Hearings* 29. The antitrust subcommittee did not want to "give [the NFL] carte blanche to black out at any time." *Id.* at 30. They felt "the adoption of this legislation without amendment would completely nullify the [1953] decision of Judge Grim." *Id.* However, because the NFL had been "operating satisfactorily" under Judge Grim's 1953 blackout compromise (see notes 4 & 11-12 *supra*), the blackout amendment was proposed with the intent that only those blackouts sanctioned by Judge Grim would be exempt after passage of the bill. *Id.* at 28. See also H.R. REP. No. 1178, 87th Cong., 1st Sess. 5 (1961).

¹⁸ Proponents of the blackout argue that a football fan, either because he would prefer to see an outside game between teams more talented than his home team, or because he would prefer watching in the comfort and convenience of his home, will elect a televised game over a live one. The result would be a significant diminution of stadium ticket sales, against which the blackout protects. *United States v. National Football League*, 116 F. Supp. 319, 325 (E.D. Pa. 1953). The conclusion that gate revenues would be significantly diminished without the blackout's protection is not necessarily correct. Judge Grim's finding that home game telecasts endangered live attendance was based on evidence that the 1950 Los Angeles Rams suffered poor attendance when all their home games were televised. *Id.* That single experiment should not control today.

Many fans would not trade a stadium seat at the 20-yard line for a 50-yard line television seat in an easy-chair, even if they had the option. Anyone who has attended a professional game in person knows television viewing is a different experience. It might be simply the bark of the "hot dog man," or it might be the more complex exhilaration of being part of the crowd's reaction to a big play, but there is more to be seen and heard and felt at the stadium.

Furthermore, the prevalence of television football makes stadium attendance an attractive alternative. In most areas fans can watch three games a weekend for the fourteen week NFL season; two Sunday afternoon and one Monday night. Only on seven Sundays during the season can local fans watch the home team play at the home stadium. It is reasonable to assume that many home team fans will continue to take advantage of those opportunities, even if the game is televised.

¹⁹ H.R. 9096, 87th Cong., 1st Sess. (1961). The antitrust exemptions were passed by the House on September 18 (107 CONG. REC. 20,064 (1961)), by the Senate on September 21 (*id.* at 20,662), and signed into law on September 30 (*id.* at 21,552).

The pooled rights exemption, plus the blackout and college football provisions, were supported by both the House and Senate Judiciary Committees because they ensured television coverage of teams that would have difficulty negotiating individual television

legislators²⁰ nor all football fans²¹ have been happy with the blackout, until recently it has not been significantly challenged.

B. *The Blackout and the Public*

The 1971 NFL Championship Game, Super Bowl V, was held at the Orange Bowl in Miami, Florida. The Bowl's 80,000 seats were sold out, with "scalpers" asking as much as \$100 a ticket the night before the game.²² The Miami area was to be blacked out for a radius of seventy-five miles. In the week immediately before the game 75,000 Floridians signed petitions and mailed newspaper coupons protesting the blackout. Suits were filed in state and federal courts in unsuccessful attempts to force NFL Commissioner Pete Rozelle to lift the blackout.²³ The Commissioner refused requests to allow Miami-area broadcast of the game, explaining that ticket sales for future Super Bowl games would suffer if the fans felt they could avoid paying for a stadium seat and watch the game on television for free.²⁴

contracts. They also abolished the disparity between the contract rights of the NFL and the rival American Football League (AFL). The AFL was not subject to the 1953 order, and the 1961 construction of that order did not affect the AFL. It was free to sell the pooled television rights of its member clubs. S. REP. No. 1087, 87th Cong., 1st Sess. (1961); H.R. REP. No. 1178, 87th Cong., 1st Sess. (1961).

²⁰ The definitional vagueness of the statutory blackout and concern for its equitable administration have prompted proposals to amend section 1292, none of which has succeeded. See notes 35 & 46 *infra*. The most recent action involving section 1292 is a proposal for its repeal made by Congressman Emanuel Celler, chairman of the House Judiciary Committee and the Antitrust Subcommittee. Congressman Celler strongly supported the blackout at the time of its original enactment. See note 66 *infra*.

²¹ In 1962 fans without tickets to the sold out New York Giants-Green Bay Packers NFL championship game sought a preliminary injunction to force the NFL to lift the New York City area blackout of the game. *Blaich v. National Football League*, 212 F. Supp. 319 (S.D.N.Y. 1962). The action was brought on the Friday before the Sunday the game was to be played. The plaintiffs argued that the blackout privilege should not apply to championship games and also raised "vaguely defined" constitutional issues. *Id.* at 321-22. The court, finding that the plaintiffs had asked too much and brought too little too late as justification, denied the injunction. This case was not a real test of the statute. The issue of championship game blackouts is still a *cause célèbre* with many football fans. See notes 22-26 and accompanying text *infra*.

²² N.Y. Times, Jan. 18, 1971, at 31, col. 1.

²³ Letter from Ellis Rubin, Attorney, to the *Cornell Law Review*, September 7, 1971. Mr. Rubin, active in a "Ban-The-Blackout Club," filed the state and federal actions. The federal court held that he lacked standing to sue. However, State Circuit Court Judge Franza, although powerless to lift the blackout, held the blackout to be a clear violation of the Sherman Antitrust Act (15 U.S.C. §§ 1-7 (1970)). N.Y. Times, Jan. 17, 1971, § 5, at 3, col. 1. The "Ban-The-Blackout Club" has shifted its base of operation to New Orleans and will continue to fight against Super Bowl blackouts. Letter from Ellis Rubin, *supra*. See text accompanying notes 25-26 *infra*.

²⁴ N.Y. Times, *supra* note 23. It is extremely difficult to see any Super Bowl as a risky business venture that requires congressional protection. When NBC televised the 1971

The 1971 Super Bowl is history, and it was blacked out. But the legality and propriety of blackouts of championship games is still at issue. A group of attorneys in New Orleans, site of Super Bowl VI in 1972, is preparing a court action on the strength of 30,000 signed protests to the announced blackout of the game, seeking to enjoin it as a violation of the blackout statute.²⁵ With the New Orleans Saints not in the Super Bowl, neither team will be a "home team" within the letter of the statute,²⁶ and a blackout of the game should not be protected.

Although the viewing public's objections to the NFL's blackout policy²⁷ have surfaced most noticeably in relation to the Super Bowl blackouts, regular season blackouts are objectionable as well. The NFL employs a regular season blackout that has affected far more cities and more fans in 1971 than it did in 1961,²⁸ yet the league's economic circumstances have greatly improved during those ten years.²⁹ Because the NFL is no longer financially unstable, there is no compelling need for blackout protection today.³⁰

Perhaps the clearest statement of the NFL's position on blackouts is offered by Commissioner Rozelle:

If a club announced in advance of its ticket sales, that all of its home games would be telecast locally, the impact on ticket sales

game, it was estimated that 64 million viewers watched it over 510 local stations. *Id.* at col. 4. Sponsors paid the network \$200,000 per minute of commercial time during the game. *Id.* at 4, col. 7. The NFL Commissioner's refusal to lift the blackout of a sold out game that is so financially successful evidences an insensitivity to the public interest. The antitrust exemptions in favor of professional sports carry with them a responsibility to the public. This was reiterated by the Senate Judiciary Committee when it studied 1965 legislation pertaining to professional sports: "Certainly the exemptions granted to the team sports . . . constitute an obligation on them to act in the public interest." S. REP. NO. 462, 89th Cong., 1st Sess. 14 (1965).

²⁵ Letter from Ellis Rubin, *supra* note 23.

²⁶ This issue was not a factor in *Blaich* because the New York Giants were a home team in a game played in New York. The court in that case relied on a literal reading of section 1292 to determine that Congress did not intend to limit the blackout protection to regular season games. If the section is read literally in deciding the issue of Super Bowl blackouts, the absence of a "home team" should exclude such blackouts from protection.

²⁷ There are other objections to the NFL's exercise of the blackout privilege. Because of the blackout, home territory fans must buy tickets to see home games, and some NFL teams force fans to buy "tie-in" tickets for exhibition and regular season games. At least one fan and his attorney feel that, where the exhibition and regular season game tickets are tied-in, fans are compelled to purchase an inferior product (exhibition game tickets) in order to get a superior one (regular-season tickets). A suit alleging that this practice constitutes an antitrust violation has been filed against the NFL. *Coniglio v. Highwood Servs., Inc.*, Civil No. 1970-408 (W.D.N.Y., filed Sept. 9, 1970).

²⁸ See notes 38 & 39 *infra*.

²⁹ See generally notes 56-62 and accompanying text *infra*.

³⁰ See notes 55-59 and accompanying text *infra*.

for the season or on a game-by-game basis could be dramatic. Fans could hold back on the buying of tickets to await the progress of the team during the season, skip cold weather games, buy tickets only to the particular games of their choice, and generally keep the ticket sale pattern in a state of continuing confusion.³¹

It is difficult to reconcile this statement and the attitude it represents with the obligation of professional football to act in the public interest.³²

II

REFORM OF THE BLACKOUT EXEMPTION

The blackout statute provides that the antitrust laws will apply when an agreement for the sale of television rights prohibits the purchaser from "televising any game" in any area except the "home territory" of a team playing at home. Both quoted phrases are ambiguous and have never been legislatively or judicially defined.

The blackout declared legal in 1953 was the "home territory" blackout then used by the NFL clubs pursuant to the NFL constitution and bylaws.³³ The blackout statute, drafted to codify the 1953 decision,³⁴ sanctioned this type of blackout. Today, "home territory" is defined by the NFL bylaws as "the surrounding territory to the extent of 75 miles in every direction from the exterior corporate limits of [a home] city."³⁵ The NFL has generally applied the seventy-five mile standard in impos-

³¹ Letter from Pete Rozelle, Comm'r, Nat'l Football League, to the *Cornell Law Review*, Oct. 5, 1971. See note 65 *infra*.

³² See note 24 *supra*.

³³ *United States v. National Football League*, 116 F. Supp. 319, 321 (E.D. Pa. 1953). See notes 4 & 11-12 *supra*.

³⁴ See note 17 *supra*.

³⁵ CONSTITUTION AND BY-LAWS OF THE NATIONAL FOOTBALL LEAGUE art. 4.1 (1971). Exceptions to the general 75-mile rule are made in two instances: (1) where two league clubs, other than San Francisco and Oakland, are in cities within 100 miles of each other, the territorial right of each extends half the distance between them; and (2) the Green Bay Packers' territory is the 75-mile area plus the county of Milwaukee, Wisconsin. *Id.* art. 4.1(a), (b).

Nevertheless, blackout areas can vary widely under this definition, depending upon the sprawl of a home city's corporate limits. This variance inspired the proposal of an amendment to section 1292 in 1963 to define the home territory as that area within 75 miles of the game site. The concern was that

professional football leagues have attempted to apply a new and more restrictive television practice which has blacked out additional areas from these telecasts. . . .

Such new practice would black out additional television stations serving millions of people which are located up to 125 or more miles from the game city. . . .

109 CONG. REC. 12,136 (1963). The amendment was referred to the House Judiciary Committee and died there.

ing blackouts,³⁶ although there is no statutory requirement that it must.³⁷ The seventy-five mile limit is not realistic for purposes of ensuring gate receipts today, and the blackout area should be constricted and individualized.³⁸

Whatever the "home territory" is or should be, if the NFL can prohibit a network from "televising any game" within it, does that mean the game cannot be *received* within the blackout area, or that it cannot be *telecast* from within the blackout area?³⁹ The difference between these two possible readings is measured by the difference in the number of viewers who will be deprived of seeing the blacked out game.

Under a "reception blackout" reading of the statute, the NFL can keep all game telecast signals out of the home territory. However, to achieve this type of blackout, a television station cannot "fuzz-out" its telecast signal by diminishing its power and "shortening" the reach of the signal.⁴⁰ Therefore, the only alternative of a station whose signal

³⁶ The blackouts in *Blaich* and of the 1971 Super Bowl V were for 75 miles. See notes 4 & 22-24 and accompanying text *supra*.

³⁷ See note 35 *supra*. Section 1293, which protects intercollegiate and interscholastic football gate revenues, is more explicitly drafted than section 1292. It provides that the antitrust laws will apply to any agreement "which permits the telecasting . . . of any professional football game . . . from any telecasting station located within seventy-five miles of the game site" of a scheduled collegiate or scholastic game. Congress did not want to leave the fate of college and high school football revenues to the NFL's good faith adherence to its policy of not interfering with school football. See *TV Hearings* 36-39. The implication is that the NFL was trusted to act in good faith with the public in applying the section 1292 blackout, which is not defined in terms of a mile limit. *Quaere* whether the NFL is living up to that trust today. See notes 22-32 *supra*; note 66 *infra*.

³⁸ The improvement in roads and suburban transit systems and the growth of metropolitan population today give a larger segment of the population access to professional football games than in 1953. This increase in potential ticket buyers should decrease the amount of blackout protection necessary to support gate revenues. *Cf.* note 18 *supra*. The exact extent of a blackout should vary according to league, city, and game. See text accompanying note 51 *infra*.

³⁹ Even the NFL bylaws are confused on this point. In one section they say no club shall permit its game to be "telecast into any area." CONSTITUTION AND BY-LAWS OF THE NATIONAL FOOTBALL LEAGUE art. 10.2(a) (1971) (emphasis added). In another they refer to a "telecast . . . within the home territory." *Id.* art. 10.2(b) (emphasis added). The drafting is not ambiguous in defining the championship game blackout, however: "No television station may carry or broadcast the game if its signal is visible in the home territory (75 miles) of the home club in the city where the game is being played. The Commissioner's decision in this matter shall be final." *Id.* art. 10.5(2).

⁴⁰ This point was recently decided by the Federal Communications Commission. *In re Violation by Lee Enterprises, Inc.*, 27 F.C.C.2d 887 (1971). A CBS affiliate in Iowa, Station KGLO-TV (KGLO), owned by Lee Enterprises, Inc., was given permission by CBS to telecast the Minnesota Vikings-Green Bay Packers football game on November 22, 1970, but only if it reduced its broadcast power by 20% so that its signal could not be received in the Minneapolis area, the game site. The FCC decided that the deliberate reduction of

reaches the home territory is not to carry the ball game.⁴¹ This means that viewers who are sufficiently distant from the game site so that it is unreasonable to expect them to attend will be deprived of the telecast. If the "public has the right to enjoy the fullest practicable dissemination of the interstate telecasts of professional sport events,"⁴² this construction of the blackout privilege would seem to be contrary to public policy.

Under a "telecast blackout" reading of the statute, the NFL would only be able to direct stations within the home territory not to telecast a game when a home game was being played. A proposed 1963 amendment to the blackout statute would have adopted such an interpretation.⁴³ This interpretation would allow a station just outside the area defined as the home territory to telecast the game, and do essentially what a station just inside the home territory is forbidden to do. Read this way, the statute is ludicrously arbitrary, inviting frustration of its purpose as long as there is technical compliance with its terms.

Technical difficulties in defining a workable blackout, therefore, may be insurmountable. The "reception blackout" affects more of the public than just that segment within the home territory, and the "telecast blackout" does not ensure that prospective ticket buyers will not receive the telecast.

Compounding the ambiguity of the blackout statute is the NFL's authority to regulate its own antitrust exemption.⁴⁴ The greater the

power, the "fuzz-out," constituted a violation of FCC rules. *Id.* at 888. The Commission was content with KGLO's promise not to commit similar violations in the future and imposed no sanctions against either KGLO or CBS. This decision was scathingly denounced in a dissent by Commissioner Nicholas Johnson. *Id.* at 890. The violation was caused by the CBS-KGLO attempt to comply with the NFL's blackout requirement, and for Commissioner Johnson this privilege was the real culprit in the case:

Perhaps it is time for this Commission to formally ask the U.S. Department of Justice for a full-scale review of the blackout policy and the apparent abuses that have developed since the anti-trust exemption authorizing the blackout was adopted by Congress in 1961.

Id. at 891.

Since this case was decided the FCC has investigated sports blackouts, and "[a] report has been submitted to the Commission by the staff, but no position has yet been taken by the Commission. The report itself is a confidential document . . . [un]available . . . for perusal." Letter from Richard E. Wiley, General Counsel, FCC, to the *Cornell Law Review*, Oct. 14, 1971.

⁴¹ 27 F.C.C. 2d at 889 (concurring statement of Chairman Burch).

⁴² 109 CONG. REC. 12,135 (1963) (remarks of Congressman Stubblefield).

⁴³ H.R. 7365, 88th Cong., 1st Sess. (1963). This is also the current approach used by the statute to protect school game revenues from the competition of professional football telecasts. See note 37 *supra*.

⁴⁴ Typically, federal agencies are empowered to regulate economic enterprises benefited by an antitrust exemption. See, e.g., 16 U.S.C. §§ 824-824h (1970) (FPC regulation of

restriction on home territory telecasts, the more the NFL stands to gain⁴⁵ and the more the viewing public stands to suffer. Because the interest of a prosperous NFL is inversely related to that of the public in this area, the administration of the blackout privilege should not be vested solely in the league.

The most recent legislative attempt to amend the blackout statute implicitly recognized that administration of the blackout in a manner consistent with the public interest is a *sine qua non* of the exemption's validity.⁴⁶ To minimize the number of fans deprived of a telecast, application of a blackout privilege should be responsive to the particular circumstances of each game.

The first issue to be settled is the degree of financial protection that should be extended to the NFL. That is, should the blackout be imposed unless there is a sellout, or would ensuring the league a three-quarter capacity crowd be sufficient? Commissioner Rozelle feels that the league clubs should be entitled to sellouts. He comments:

electric utility companies engaged in interstate commerce). For several exemptions which do not provide for governmental regulation as an alternative to antitrust control, see Pogue, *Introduction to Antitrust Exemptions*, 33 ABA ANTITRUST L.J. 1 (1967). These exemptions are necessitated by the unique circumstances of the economic sector affected, about which it is difficult to generalize. *Id.* at 6.

The professional sports telecasts exemption allows NFL clubs to contract as a league with a television network and in that contract to restrict home territory telecasts. Congress leaves the regulation of this exemption to the NFL. Traditionally, because of its sensitivity "to the preservation of public confidence in the honesty in sports contests," Congress has followed a hands-off policy in its dealings with professional sports. S. REP. NO. 462, 89th Cong., 1st Sess. 14 (1965). Thus, the professional sports telecasts exemption may not be regulated by the government because of the desire to keep professional sports free, in the eyes of the public, from outside control. Pogue, *supra* at 3.

⁴⁵ As to whether the converse is true, that milder restrictions on home territory telecasts would mean a loss to the NFL, see note 18 *supra*. It should also be noted that the additional television income the NFL clubs might secure from allowing telecasts within the 75-mile area could partially offset any loss of ticket sales.

⁴⁶ In attempts to keep games before as much of the public as possible, two bills have been introduced which would terminate the antitrust exemption for blackouts when the home game is sold out. H.R. 15128, 91st Cong., 1st Sess. (1969) provided for termination of the exemption if a game were sold out three days before game day. It died in the House Judiciary Committee.

S. 1521, 92d Cong., 1st Sess. (1971) is currently being considered jointly by the Senate Judiciary and Commerce Committees. It would add to the blackout section: "but this exception shall cease to apply with respect to any such game when tickets for admission to such game are no longer available to the general public." 117 CONG. REC. S 4748 (daily ed. April 14, 1971). See also *id.* S 6423 (daily ed. May 6, 1971). The amendment was proposed by Senator Proxmire because over 90% of the seats in NFL stadiums were sold out for the 1970 season games. *Id.* Cf. text accompanying note 47 *infra*. Noting that the airwaves belong to the public and not to professional football, he said: "Times have changed since the blackout section was passed. Pro teams are no longer struggling to survive. It is time that the fan got a break as well as the owners of the clubs." 117 CONG. REC. S 4748 (daily ed. April 14, 1971).

It is a complete mistake to assume that all or even most NFL clubs are guaranteed advance sellouts of all of their home games, even under the present rules. A few are, but many experience sellouts only on infrequent Sundays or only through ticket sales continuing right up to the start of the game.⁴⁷

The substantial television revenues which the league realizes would seem to indicate that less than sellout crowds would not mean financial disaster.⁴⁸ It may be impossible, however, to administer a blackout dependent upon a full or substantial sellout. Commissioner Rozelle states that "[i]t is quite impractical to attempt to make the availability of the local game on home TV turn on the existence of a sellout at the stadium."⁴⁹ He argues that "unworkable problems" in securing sponsors and cable facilities, and in coordinating local and network stations, would result. Neither does he wish the league and its fans to be forced into a "great guessing game" over which contests might be televised. According to the commissioner these practical difficulties would cause "a major disruption of the League's television contracts and arrangements with the networks."⁵⁰

Another issue involves the size of the area actually blacked out. This should bear some relation to the game site and type of game. The administrator of the blackout should individualize the "home territory" of each club according to the population of its home city and the accessibility of the stadium.⁵¹ He would have to consider these factors for as many as thirteen games weekly, beginning with exhibition games in August and ending with the Super Bowl in January. Such individualization would thus be a formidable task.

With cable television developing as an alternative to free microwave television,⁵² administrative problems with the blackout become more complicated. The possibility that cable transmissions into blacked out areas will be used to undercut the blackout's effect,⁵³ or for closed

47 Letter from Pete Rozelle, *supra* note 31.

48 See note 62 *infra*.

49 Letter from Pete Rozelle, *supra* note 31.

50 *Id.*

51 See text accompanying note 38 *supra*.

52 Cable television systems receive the signals of telecasting stations, amplify them, transmit them by cable, and distribute them by wire to the receivers of their subscribers. Noting that cable television "is developing and expanding at a very rapid rate," the FCC has asserted jurisdiction over cable television, applying rules governing carriage of local signals and nonduplication of local programming. *In re* Community Antenna Television Sys. (CATV), 2 F.C.C.2d 725, 726-28 (1966).

53 Although cable transmissions of distant signals into the 100 largest television markets have been generally banned to protect local broadcasters, they will be allowed "upon a showing approved by the Commission that such extension would be consistent with the public interest" 47 C.F.R. § 74.1107(a) (1971). The FCC's authority to

circuit telecasts for which admission is charged,⁵⁴ is a further issue which must be considered in any attempt to reform the blackout exemption.

Commissioner Rozelle's objections to "sellout blackouts" have merit, and the problems in fairly administering an individualized blackout are substantial. Since the problems attendant upon a reformation of the blackout exemption preclude its efficient administration on a game-by-game basis, the more fundamental issue of whether the blackout is at all viable in 1971 must be reached.

III

REPEAL OF THE BLACKOUT PRIVILEGE

It has been ten years since Congress exempted professional sports telecasting from the application of the antitrust laws, and eighteen years since the blackout privilege was judicially extended to football. Judge Grim's decision to allow blackouts in 1953 was based upon his appraisal of the economic status of the NFL at that time. The NFL's restraint of trade⁵⁵ was reasonable then partly because of the peculiar nature of the

regulate cable television in this manner was upheld in *United States v. Southwestern Cable Co.*, 392 U.S. 157 (1968). FCC Commissioner Johnson feels that "affirmative cable policies" would be one way to reduce the number of fans deprived of seeing games by telecast blackouts. Letter from Nicholas Johnson, Comm'r, FCC, to the *Cornell Law Review*, Oct. 28, 1971. Although this would increase public access to games, it would make such access depend upon one's ability to pay cable charges.

⁵⁴ The idea of using closed circuit telecasts to increase revenue is not new, but some NFL clubs with sold out home schedules have only recently turned to it. See note 66 *infra*. Many legislators are opposed to exclusive closed circuit telecasts of sporting events in which a large segment of the public is interested. Legislation pending before the House Interstate and Foreign Commerce Committee would prohibit production of games over closed circuit television whenever there is sufficient public interest to justify free microwave telecasts. H.R. 6718, H.R. 7679, H.R. 7680, 92d Cong., 1st Sess. (1971). Similar legislation is before the Senate Commerce Committee. S. 1435, 92d Cong., 1st Sess. (1971).

⁵⁵ There is "little doubt that [the blackout] constitutes a contract in restraint of trade." *United States v. National Football League*, 116 F. Supp. 319, 322 (E.D. Pa. 1953). The "outside game blackout" with which Judge Grim was concerned, is an agreement to allocate marketing territories. *Id.* The two teams involved in the home game share the gate revenues (*TV Hearings* 9) and thereby benefit by restricting in the home territory the television markets of the teams in outside games.

In the case of the "home game blackout" the network, a distributor of the game to the television market, is restricted from "reselling" the game within the home territory, giving an advantage to the two competing teams that sell the game directly to a live audience. The practice is analogous to the case of a manufacturer who sells products to his distributors subject to territorial restrictions on resale. *United States v. Arnold Schwinn & Co.*, 388 U.S. 365 (1967). If the manufacturer retains ownership of the goods so that the distributor is his agent or salesman, restrictions on the distributor's resale are lawful unless they unreasonably interfere with competition. *Id.* at 380. Factors bearing on the reasonableness of such interference are the number of competitors of the manufacturer and

sports business. Financially weak teams, which cannot compete in the talent market, cannot compete on the playing field:

The evidence shows that in the National Football League less than half the clubs over a period of years are likely to be financially successful. There are always teams in the League which are close to financial failure. *Under these circumstances* it is both wise and essential that rules be passed to help the weaker clubs in their competition with the stronger ones and to keep the League in fairly even balance.⁵⁶

Total financial failure was a very real possibility in 1953, when substantial gate revenues could mean the survival of a team:

The greatest part of [NFL] clubs' income is derived from the sale of tickets to games. Reasonable protection of home game attendance is essential to the very existence of the individual clubs, without which there can be no League and no professional football⁵⁷

The "very existence of the individual clubs" in the NFL is no longer precarious, because professional football in 1971 is a much healthier creature than it was when the antitrust exemptions were granted.⁵⁸ Its growth is manifested by the increase in the number of clubs⁵⁹ and the number of games played each season.⁶⁰ The NFL regular

whether the distributor handles some of the brands in competition with the manufacturer's product. *Id.* at 381. The NFL has no market competitors and the network handles no other brands. Therefore, to the extent the sale of the game is analogous to the sale of a product, the "home game blackout" is an antitrust violation. *See also* note 69 and accompanying text *infra*.

⁵⁶ *United States v. National Football League*, 116 F. Supp. 319, 323 (E.D. Pa. 1953) (emphasis added). In the first three decades of the NFL's existence 41 franchises failed. *TV Hearings* 4.

⁵⁷ 116 F. Supp. at 325.

⁵⁸ It oversimplifies to attribute professional football's growth solely to the protective television legislation of 1961, although that legislation was a substantial contributing factor.

⁵⁹ In 1953 the NFL was composed of 12 clubs: *Baltimore Colts*, *Chicago Bears*, *Cleveland Browns*, *Detroit Lions*, *Green Bay Packers*, *Los Angeles Rams*, *New York Giants*, *Philadelphia Eagles*, *Pittsburgh Steelers*, *St. Louis Cardinals*, *San Francisco Forty-Niners*, and *Washington Redskins*. The *Dallas Cowboys* were added in 1960, and the *Minnesota Vikings* in 1961. In 1959, the AFL was founded, and added eight more professional football teams: *Boston Patriots*, *Buffalo Bills*, *Dallas Texans* (now *Kansas City Chiefs*), *Denver Broncos*, *Houston Oilers*, *New York Jets*, *Oakland Raiders*, and *San Diego Chargers*. Since 1966 four more clubs have been added: *Atlanta Falcons*, *Cincinnati Bengals*, *Miami Dolphins*, and *New Orleans Saints*. The NFL is currently comprised of 26 teams. CONSTITUTION AND BY-LAWS OF THE NATIONAL FOOTBALL LEAGUE art. 4.4 (1971); H. CLAASSEN, *THE HISTORY OF PROFESSIONAL FOOTBALL*, 480-83, 503 (1963).

⁶⁰ NFL teams played a 12-game season in 1953. With the addition of *Dallas* in 1960 and *Minnesota* in 1961, the number of season games increased to 13 and 14 respectively. The eight AFL teams played a 14-game schedule in their first season in 1960. H. CLAASSEN,

season and play off game attendance figure has more than doubled since 1960.⁶¹ During the same period the television rights contract figure has increased by a factor of five.⁶²

Originally the blackout was a paradox: a restriction on public access to professional sports contests to promote public access to professional sports contests. Today the blackout restricts public access to games more than it did in 1960,⁶³ although such economic protection is no longer essential to the NFL.⁶⁴ The original purpose of the legislative antitrust exemption has been achieved and there are no new or alternative justifications for its existence.⁶⁵ The exemption is neither necessary nor beneficial in 1971.

supra note 59. Today the 26 NFL teams play a 14-game season. There have been recent increases, however, in the number of pre-season (exhibition) and post-season (playoff) games. In spite of objections by many players and some coaches, the number of exhibition games played by each NFL team has been increased to six over the past few years. See SPORTS ILLUSTRATED, Sept. 13, 1971, at 18. The number of playoff games has also been increased. Originally only a championship playoff game was held unless there were ties. But in 1970 the NFL was reorganized into two conferences with three divisions in each conference. Under the new organization, four teams from each conference enter the playoffs. CONSTITUTION AND BY-LAWS OF THE NATIONAL FOOTBALL LEAGUE art. 20.1 (1971). Four quarter-final games, two semi-final games, the Super Bowl, and a consolation game between the semi-final game losers now constitute the league post-season slate. There are also the Pro Bowl (professional all-star) and College All-Star (Super Bowl winner against the best college graduates) games.

61

PROFESSIONAL FOOTBALL ATTENDANCE

League	1960	1965	1970†
AFL	958,000	1,812,000	—
NFL	3,195,000	4,685,000	9,913,000
Total*	4,153,000	6,497,000	9,913,000

* Does not include exhibition games.

† AFL-NFL merger was effected in 1969.

BUREAU OF THE CENSUS, U.S. DEPT OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES: 1971, at 201 (1971); *id.* 1968, at 207 (1968); *id.* 1961, at 196 (1961).

⁶² The "pooled rights" contract which triggered the 1961 sports telecasting legislation would have garnered more than \$4.6 million for the NFL for the 1961 season. *TV Hearings* 57. The then separate AFL was under contract for \$2 million for its television game rights. *Id.* On January 26, 1970, NFL Commissioner Rozelle announced that the league had reached a four-year agreement with the three major television networks, reported to involve \$142 million. The agreement covers the telecast rights to all NFL games during the four years of the contract and amounts to \$35.5 million annually. FACTS ON FILE YEARBOOK 583 (1970).

⁶³ See note 28 and accompanying text *supra*.

⁶⁴ See text accompanying notes 56-62 *supra*.

⁶⁵ Commissioner Rozelle has stated that the NFL's adherence to its blackout policy "is not the product of greed nor is it an arbitrary or irrational decision." Letter from Pete Rozelle, *supra* note 31. But see Joint Statement of Senator Ervin and Congressman

CONCLUSION

Football's anemia was judicially diagnosed in 1953, and treatment began in the form of a limited blackout privilege. Congress concurred in the diagnosis in 1961, rewrote the blackout prescription, and added the permission to pool television rights. In 1971 the anemia has been cured, but a new ill, avarice,⁶⁶ has replaced it. The new ill thrives on the blackout, and that prescription should be withdrawn.⁶⁷ Indeed, the NFL has even indicated that the blackout is no longer essential to its existence.⁶⁸ Professional football has grown strong enough to fend for

Celler, N.Y. Times, Oct. 1, 1971, at 49, col. 5. To support his statement, the Commissioner bases the blackout policy on five necessary factors. Three of these directly relate to the "protection" of league revenues, which, considering the league's financial status today, can more properly be termed profit maximization. See text accompanying notes 31, 47 & 49 *supra*. "Good faith with the fans who have already purchased tickets to the game" is the fourth factor. League attitudes towards ticket holding fans (text accompanying note 31 *supra*) indicate that this "good faith" concern does not extend to other areas. Finally, the league desires to avoid having "vast television audiences watching events in comparatively empty arenas" because "fan attendance at the stadium is still the heart of the game." Empty arenas, of course, would not necessarily result if the blackout exemption were abolished. See note 18 *supra*.

⁶⁶ Not satisfied with revenues from the sale of season tickets, some NFL clubs have announced they will televise home games via closed circuits to the home territory and thus charge admission for the privilege of seeing a televised home game. N.Y. Times, Sept. 30, 1971, at 66, col. 3. Such league attitudes have prompted Senator Ervin and Congressman Celler to introduce bills before the Senate and House to repeal all antitrust exemptions in favor of professional football and baseball, and to overrule baseball's judicial exemption from the antitrust laws. See note 8 *supra*. Congressman Celler was responsible for guiding the 1961 legislation through the House. In a joint statement with Senator Ervin, he explained his change of heart:

Too often clubs have come crying for special legislation because they believe the health of pro sports is in the national interest. But when it comes to blacklisting, to throttling player negotiations, to charging high prices for tickets, to TV blackouts and to moving franchises at will, they act with the greedy single-mindedness of a child reaching for a candy jar—more, more, more.

N.Y. Times, *supra* note 65.

⁶⁷ The exemption favoring the pooling of television rights should not be withdrawn. It gives the NFL a bargaining position from which to negotiate television coverage for all teams in the league. This increases the number of games telecast and the number of fans reached. Commissioner Rozelle made the point well during the 1961 hearings:

The networks have their own problems of production costs, cable charges, costs per homes reached, and sponsor availability. If the league cannot have any voice in the manner in which its games are telecast, the networks will be guided, as they necessarily must, by their own economic interests—which in this instance are not the interests of professional football, [or] of the sports fans of America

TV Hearings 4.

⁶⁸ The NFL has voluntarily given up its "outside game blackout" privilege.

Since 1961, the member clubs of the League have abandoned a major element of their legally established blackout rights. They decided in 1966 to engage in a modified lifting of all home territory blackouts, *i.e.*, to permit outside games to

itself without the blackout privilege. Its blackout policies should be turned out to the antitrust wars, where football will be forced to use its strength to defend the blackout on its merits.⁶⁹

Thomas M. Torrens

come into a member club's home territory even when the home team was playing at home. As a result, an NFL home territory regularly offers three NFL game telecasts when the home team is playing away and a minimum of two when the home team is playing at home.

Letter from Pete Rozelle, *supra* note 31. The "home game" blackouts, however, continue.

⁶⁹ Withdrawal of the legislative antitrust exemption for football blackouts will not necessarily make future blackouts illegal. It will merely substitute the flexibility of judicial control for the inflexibility of statutory privilege. Blackouts will be required to be utilized "reasonably" or be subject to judicial antitrust sanctions.

BUFFALO BILLS,
Detroit, Mich., October 6, 1972.

HON. JOHN PASTORE,
*Senate Office Building,
 Washington, D.C.*

DEAR SENATOR PASTORE: In recent days I have learned of proposals before Congress to alter the existing television blackout policies regarding home games of National Football League teams.

Frankly, I was alarmed by the prospect. As the player representative for the Buffalo Bills in the National Football League Players Association, I called a meeting of all our players to discuss the matter.

Every player without exception voiced disapproval of the proposed legislation. Some even expressed fear of the consequences of altering the blackout policy.

Allow me to explain our concern.

Any diminishing of game attendances can only affect the players' earning power adversely. In our view lifting of the blackout can have only that eventual result.

To carry our position one step further, severe loss of game revenues could—and most assuredly would—lead to cutting of roster size and a slashing of player salaries.

With smaller rosters, there would be a lessening of employment opportunities in a sport that is already extremely competitive and has a very short career duration under the best of circumstances.

It would be a simple case of economics dictating that the sport all of us have devoted our young years to would retrogress—and I'm sure you would not want that to happen.

To more fully explain our sentiments I would take the situation which exists here in Buffalo.

By virtue of the television network contracts, our fans already are assured of seeing all of our road games—50% of our schedule—on home television.

That, indeed, should be considered in the weighing of any legislation.

Now in Buffalo only about one half of our stadium of 46,206 capacity is sold on a season ticket basis.

The history of the club—in winning seasons as well as poor ones—has been that sellouts number two, sometimes three, games a year.

Let's say that all three games were televised locally. Naturally, they would be the most attractive games. The home viewer then would be able to see 10 of 14 games without spending one cent to see the team play.

What then would be a fan's incentive under those circumstances to buy tickets, since he's already getting a majority of the schedule free?

And once that downward attendance spiral began who can safely predict just how it would stop short of affecting season ticket sales and attendance the following year?

My teammates and I fear that once the lifting of home game television blackouts became mandatory, the general structure of professional football would be weakened and it could be disastrous for areas like Buffalo and San Diego, which lack the great population concentration of cities like New York and Washington.

All the members of the Buffalo Bills team urge you to consider our stated position and concern and to vote against any legislation which could seriously affect our livelihood.

Sincerely,

PAUL M. GUIDRY.

We, the members of the Buffalo Bills Football Team, hereby state our complete approval of the stand taken by Player Representative Paul Guidry in this letter.

Forty-six signatures were attached to the letter and are in the committee files.

OFFICE OF THE CITY CLERK,
CITY OF SAINT PAUL,
BUREAU OF RECORDS,
St. Paul, Minn., October 13, 1972.

Senator JOHN PASTORE,
Senator from Rhode Island,
Senate Office Building, Washington, D.C.

DEAR SIR: Enclosed for your information is a resolution of the City Council of St. Paul, Minnesota supporting legislation which would allow televising of National League Football games in the area they emanate from providing they are sold out 48 hours prior to game time.

Yours very truly,

HARRY E. MARSHALL,
City Clerk.

CITY OF ST. PAUL, OFFICE OF THE CITY CLERK,
COUNCIL RESOLUTION—GENERAL FORM,
October 12, 1972.

Presented by Commissioner W. Konopatzke

Whereas, the Council of the City of Saint Paul is concerned with the inequitable situation that exists due to local television blackouts of national league football games; and

Whereas, Senator Walter Mondale is co-sponsoring a bill which would allow the televising of national league football games in the area they emanate from, providing they are sold out 48 hours prior to game time; now, therefore, be it

Resolved, that the Council support the introduction, passage and signing of such a bill; and be it

Further resolved, that the City Clerk is hereby authorized and directed to transmit a copy of this resolution to Commissioner Alvin (Pete) Rozelle of the NFL, Senator John Pastore of Rhode Island and Senator Walter Mondale of Minnesota.

Adopted by the Council Oct. 12, 1972.

Approved Oct. 13, 1972.

LAWRENCE H. COHEN, Mayor.

INTERNATIONAL ASSOCIATION OF AUDITORIUM MANAGERS,
Chicago, Ill., October 16, 1972.

Senator JOHN O. PASTORE,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR PASTORE: The International Association of Auditorium Managers, whose members manage auditorium, arenas, exhibition halls and stadiums, the scene of cultural activities, a variety of conventions, and sports events, is deeply concerned over the prospective development of Federal government action, either legislatively or administratively, which would prohibit the current practice of blacking out television broadcasts of at-home sport events.

Our association represents more than 600 executives of the leading public meeting facilities throughout the United States, and as executive administrator of the IAAM, I have been directed to express this consensus of their concerned viewpoint.

A large majority of these magnificent facilities are publicly owned by local government units, city, state, park districts, universities, special commissions, and other taxing bodies of government. Collectively, they represent billions of dollars of invested public funds. Retirement of these obligations is importantly dependent upon revenue generated by the rental of facilities for programs that can attract capacity attendance.

Stadiums, auditoriums, and arenas provide not only wholesome entertainment for local citizens, but also employment to residents in their respective communities. Facility staffs (ushers, ticket salesmen, grounds and maintenance personnel, administrative staffs) as well as employes of numerous other firms that provide goods and special services would suffer loss of income by any action which would reduce or jeopardize local paid-admission attendance, such as is the risk with permitting local telecasts. Secondary businesses would also suffer, such as transportation, restaurants and parking facilities.

In many cities, notably Washington, D.C., New York City, Detroit, Los Angeles and San Francisco, these new public events facilities are the keystone to the government's own plans for urban renewal and downtown redevelopment projects. The projects ability to attract the public and the resultant revenues derived are critical to the community's local property tax base, as well as the stimulated atmosphere of the community in general.

While acknowledging the popularity of telecasting local sports events to hometown fans, we sincerely fear that elimination of televised "blackouts" will drastically reduce attendance, with a tangent detrimental effect on all who are associated with live sports activities for their livelihood.

The International Association of Auditorium Managers, in its considered judgement, after weighing evidence submitted by its leadership, takes the most emphatic position that the decision to telecast local sports events should not be that of the Federal government, but rather continue to be considered as a local issue, to be determined locally.

Your consideration of taking these viewpoints under advisement with members of your Administration will be deeply appreciated.

Sincerely,

WILLIAM R. FEDER, *Executive Director.*

[Telegram]

LOS ANGELES, CALIF., *October 11, 1972.*

HON. JOHN O. PASTORE,
*Senate Office Building,
Washington, D.C.*

SENATOR PASTORE: At its meeting held October 10, 1972, on motion of Supervisor Kenneth Hahn, the board of supervisors of the county of Los Angeles went on record as unanimously endorsing Senate bill 4010, Senator John O. Pastore's proposed legislation to amend antitrust laws protecting professional sporting events, so that event will be televised for home viewing without area blackout when it is sold out 48 hours prior to scheduled beginning time of game.

JAMES S. MIZE,
Executive Officer, Board of Supervisors.

The following statement and enclosure with 23 signatures¹ was received from J. M. Mills, 12415 Starlight Ln., Bowie, Md. 20715.

Following is the statement of an incident that gives an indication of how capricious, arbitrary, and monopolistic NFL franchises can be. In the latter part of the summer of this year, Edward Bennett Williams, chief executive of the Washington Redskins, used his "blackout" rights to cancel the telecast of two of four home Redskin games on a Baltimore television station during the 1972 football season. The excuse given for this arbitrary act (as recorded in the Washington Post) was that the Redskins' organization was contemplating adding 8,500 new seats to R.F.K. Stadium for the 1973 season.

We, the undersigned, hereby record our opposition to the National Football League practice of refusing to allow the telecast of home football games (in our case, the Washington Redskins) in spite of the fact that the stadium (Robert F. Kennedy Memorial Stadium) is filled to its capacity. We find this practice capricious, arbitrary, and monopolistic.

We, therefore, lend our hearty support to legislation, now under study in Congress, which would forbid such action by the NFL.

¹ The signatures are in the committee files.

Press Release

THE NATIONAL FOOTBALL LEAGUE,
New York, N.Y., October 12, 1972.

The National Football League will televise the Super Bowl game in Los Angeles, site of the game, if all tickets are sold by ten days prior to its playing on January 14, 1973.

Commissioner Pete Rozelle, in making the announcement disclosed that the proposed telecast will be in the nature of an experiment for this season.

Rozelle, continuing to express deep concern over any proposed modification of the League's television policy, also stated that the NFL would begin next week to assemble the facts concerning the legal conflicts of stadium leases, stadium contracts with outside parties, radio and television contracts as well as practical considerations involved in altering its policy of not televising regular season games locally.

This study will be presented at a later date to Senator John O. Pastore of Rhode Island and Representative Harley O. Staggers of West Virginia, heads of congressional committees reviewing NFL procedures.

Information regarding the plan to televise Super Bowl VII locally and for the conduct of the study was conveyed to the two congressmen by the Commissioner yesterday in Washington, D.C.

NFL STADIUM CAPACITY

Baltimore Colts	60,240	Atlanta Falcons	58,850
Buffalo Bills	46,206	Chicago Bears	55,049
Cincinnati Bengals	56,200	Dallas Cowboys	65,000
Cleveland Browns	79,282	Detroit Lions	54,082
Denver Broncos	50,500	Green Bay Packers, Green Bay	56,263
Houston Oilers	50,000	Green Bay Packers, Milwaukee	47,823
Kansas City Chiefs	49,002	Los Angeles Rams	76,000
Miami Dolphins	75,385	Minnesota Vikings	49,780
New England Patriots	62,000	New Orleans Saints	80,997
New York Jets	60,000	New York Giants	62,892
Oakland Raiders	53,825	Philadelphia Eagles	65,000
Pittsburgh Steelers	50,000	St. Louis Cardinals	50,492
San Diego Chargers	52,000	San Francisco 49ers	44,000
		Washington Redskins	53,041

(Source: NFL.)

PAID ATTENDANCE FIGURES BY CLUB FOR 1970 AND 1971 SEASONS¹

	1970	1971	1970	1971
Atlanta Falcons	396,191	403,289	Buffalo Bills	274,498
Chicago Bears	315,288	381,191	Cincinnati Bengals	399,813
Dallas Cowboys	387,866	439,428	Cleveland Browns	543,110
Detroit Lions	388,503	375,196	Denver Broncos	349,802
Green Bay Packers	361,737	361,473	Houston Oilers	285,441
Los Angeles Rams	473,212	477,184	Kansas City Chiefs	334,543
Minnesota Vikings	320,006	329,220	Miami Dolphins	413,422
New Orleans Saints	456,750	525,586	New England Patriots	233,800
New York Giants	457,977	438,000	New York Jets	428,373
Philadelphia Eagles	381,147	450,100	Oakland Raiders	368,946
St. Louis Cardinals	323,406	341,718	Pittsburgh Steelers	318,698
San Francisco 49ers	287,154	316,560	San Diego Chargers	298,646
Washington Redskins	346,729	363,994		
Baltimore Colts	408,275	400,782	Total	9,533,333
				10,076,035

¹ These figure represent the total number of tickets sold, not necessarily the number of people who actually attended the games.

Source: NFL.

1971 NFL ATTENDANCE BY GAME (SOURCE: NFL)

FIRST WEEK		
Sunday, September 19:		
Dallas at Buffalo, 46,206	-----	1:00
Houston at Cleveland, 73,387	-----	1:00
Kansas City at San Diego, 54,061	-----	1:00
Los Angeles at New Orleans, 70,915	-----	1:00
Miami at Denver, 51,228	-----	2:00
New York Giants at Green Bay, 56,263	-----	1:00
New York Jets at Baltimore, 56,458	-----	4:00
Oakland at New England, 55,405	-----	1:00
Philadelphia at Cincinnati, 55,880	-----	1:00
Pittsburgh at Chicago, 55,049	-----	1:00
San Francisco at Atlanta, 56,990	-----	1:00
Washington at St. Louis, 46,805	-----	1:00
Monday, September 20:		
Minnesota at Detroit, 54,418	-----	8:00
SECOND WEEK		
Sunday, September 26:		
Atlanta at Los Angeles, 57,895	-----	1:00
Chicago at Minnesota, 47,900	-----	1:00
Cincinnati at Pittsburgh, 48,448	-----	1:00
Cleveland at Baltimore, 56,837	-----	2:00
Dallas at Philadelphia, 65,358	-----	1:00
Denver vs. Green Bay, at Milwaukee 47,957	-----	1:00
Detroit at New England, 61,057	-----	1:00
Kansas City at Houston, 46,498	-----	3:00
Miami at Buffalo, 45,139	-----	1:00
Oakland at San Diego, 54,084	-----	1:00
San Francisco at New Orleans, 81,595	-----	1:00
Washington at New York Giants, 62,795	-----	1:00
Monday, September 27:		
New York Jets at St. Louis, 50,358	-----	8:00
THIRD WEEK		
Sunday, October 3:		
Atlanta at Detroit, 54,418	-----	1:00
Baltimore at New England, 61,232	-----	1:00
Buffalo at Minnesota, 47,900	-----	1:00
Chicago at Los Angeles, 66,957	-----	1:00
Cincinnati at Green Bay, 56,263	-----	1:00
Kansas City at Denver, 51,200	-----	2:00
New Orleans at Houston, 47,966	-----	1:00
New York Giants at St. Louis, 49,571	-----	3:00
New York Jets at Miami, 70,670	-----	1:00
San Diego at Pittsburgh, 44,339	-----	1:00
San Francisco at Philadelphia, 65,358	-----	1:00
Washington at Dallas, 61,554	-----	1:00
Monday, October 4:		
Oakland at Cleveland, 84,285	-----	9:00
FOURTH WEEK		
Sunday, October 10:		
Baltimore at Buffalo, 46,206	-----	1:00
Denver at Oakland, 51,200	-----	1:00
Green Bay at Detroit, 54,418	-----	1:00
Houston at Washington, 53,041	-----	1:00
Los Angeles at San Francisco, 44,000	-----	1:00
Miami at Cincinnati, 60,099	-----	1:00
Minnesota at Philadelphia, 65,358	-----	1:00
New Orleans at Chicago, 55,049	-----	1:00
New York Jets at New England, 61,357	-----	1:00
Pittsburgh at Cleveland, 83,391	-----	1:00
St. Louis at Atlanta, 58,850	-----	1:00
San Diego at Kansas City, 50,514	-----	1:00
Monday, October 11:		
New York Giants at Dallas, 63,378	-----	8:00

FIFTH WEEK

	<i>Time</i>
Sunday, October 17:	
Baltimore at New York Giants, 62,860	1:00
Buffalo at New York Jets, 61,948	1:00
Chicago at San Francisco, 44,133	1:00
Cleveland at Cincinnati, 60,284	4:00
Dallas at New Orleans, 83,088	1:00
Detroit at Houston, 45,885	1:00
Los Angeles at Atlanta, 58,850	1:00
Minnesota at Green Bay, 56,263	3:00
New England at Miami, 58,822	1:00
Philadelphia at Oakland, 54,615	1:00
St. Louis at Washington, 53,041	1:00
San Diego at Denver, 51,200	2:00
Monday, October 18:	
Pittsburgh at Kansas City, 49,533	8:00

SIXTH WEEK

Saturday, October 23:	
Buffalo at San Diego, 49,261	9:00
Sunday, October 24:	
Chicago at Detroit, 54,418	1:00
Cincinnati at Oakland, 54,699	1:00
Denver at Cleveland, 75,674	1:00
Green Bay at Los Angeles, 75,351	1:00
Houston at Pittsburgh, 45,872	1:00
Miami at New York Jets, 62,130	1:00
New England at Dallas, 65,708	1:00
New Orleans at Atlanta, 58,850	1:00
New York Giants at Philadelphia, 65,358	1:00
San Francisco at St. Louis, 50,419	1:00
Washington at Kansas City, 51,989	3:00
Monday, October 25:	
Baltimore at Minnesota, 49,784	8:00

SEVENTH WEEK

Sunday, Oct. 31:	
Atlanta at Cleveland, 76,825	1:00
Cincinnati at Houston, 37,947	1:00
Dallas at Chicago, 55,049	1:00
Denver at Philadelphia, 65,358	1:00
Kansas City at Oakland, 54,715	1:00
Miami at Los Angeles, 72,903	1:00
Minnesota at New York Giants, 62,829	1:00
New England at San Francisco, 45,092	1:00
New Orleans at Washington, 53,041	1:00
New York Jets at San Diego, 44,786	1:00
Pittsburgh at Baltimore, 60,238	2:00
St. Louis at Buffalo, 40,040	1:00
Monday, November 1:	
Detroit vs. Green Bay at Milwaukee, 47,961	8:00

EIGHTH WEEK

Sunday, November 7:	
Atlanta at Cincinnati, 59,604	1:00
Buffalo at Miami, 61,016	1:00
Cleveland at Pittsburgh, 50,202	1:00
Dallas at St. Louis, 50,486	1:00
Detroit at Denver, 51,200	2:00
Green Bay at Chicago, 55,049	1:00
Houston at New England, 53,155	1:00
Kansas City at New York Jets, 62,812	1:00
Oakland at New Orleans, 83,102	1:00
Philadelphia at Washington, 53,041	1:00
San Diego at New York Giants, 62,905	1:00
San Francisco at Minnesota, 49,784	3:00
Monday, November 8:	
Los Angeles at Baltimore, 57,722	9:00

NINTH WEEK

Sunday, November 14:

Baltimore at New York Jets, 63,947	1:00
Buffalo at New England, 56,446	1:00
Cincinnati at Denver, 51,200	2:00
Cleveland at Kansas City, 50,388	3:00
Green Bay at Minnesota, 49,784	1:00
Houston at Oakland, 54,705	1:00
Los Angeles at Detroit, 54,418	1:00
New Orleans at San Francisco, 45,138	1:00
New York Giants at Atlanta, 58,850	1:00
Philadelphia at Dallas, 60,178	1:00
Pittsburgh at Miami, 66,435	1:00
Washington at Chicago, 55,049	1:00

Monday, November 15:

St. Louis at San Diego, 46,486	6:00
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TENTH WEEK

Sunday, November 21:

Dallas at Washington, 53,041	1:00
Denver at Kansas City, 41,945	1:00
Detroit at Chicago, 55,049	1:00
Houston at Cincinnati, 59,390	1:00
Baltimore at Miami, 75,312	2:00
Minnesota at New Orleans, 83,130	1:00
New England at Cleveland, 65,238	1:00
New York Giants at Pittsburgh, 50,008	1:00
New York Jets at Buffalo, 41,577	1:00
Philadelphia at St. Louis, 48,658	1:00
San Diego at Oakland, 54,681	1:00
San Francisco at Los Angeles, 80,050	1:00

Monday, November 22:

Green Bay at Atlanta, 58,850	9:00
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ELEVENTH WEEK

Thursday, November 25 (Thanksgiving):

Kansas City at Detroit, 54,413	12:00
Los Angeles at Dallas, 66,595	2:30

Sunday, November 28:

Atlanta at Minnesota, 49,784	1:00
Baltimore at Oakland, 54,689	1:00
Cleveland at Houston, 37,921	3:00
Denver at Pittsburgh, 39,710	1:00
New England at Buffalo, 27,166	1:00
New Orleans vs. Green Bay, at Milwaukee, 48,035	1:00
St. Louis at New York Giants, 62,878	1:00
San Diego at Cincinnati, 59,580	1:00
San Francisco at New York Jets, 63,936	1:00
Washington at Philadelphia, 65,358	1:00

Monday, November 29:

Chicago at Miami, 75,312	9:00
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TWELFTH WEEK

Saturday, December 4:

New York Jet at Dallas, 66,689	3:00
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Sunday, December 5:

Buffalo at Baltimore, 58,476	2:00
Chicago at Denver, 51,200	2:00
Cincinnati at Cleveland, 82,705	1:00
Green Bay at St. Louis, 50,443	3:00
Miami at New England, 61,457	1:00
Minnesota at San Diego, 54,505	1:00
New Orleans at Los Angeles, 73,610	1:00
New York Giants at Washington, 53,041	1:00
Oakland at Atlanta, 58,850	1:00
Philadelphia at Detroit, 54,418	1:00
Pittsburgh at Houston, 37,778	1:00

Monday, December 6:

Kansas City at San Francisco, 45,306	6:00
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THIRTEENTH WEEK

	<i>Time</i>
Saturday, December 11:	
Baltimore at Miami, 60,238-----	4:00
Detroit at Minnesota, 49,784-----	12:15
Sunday, December 12:	
Atlanta at San Francisco, 44,582-----	1:00
Chicago at Green Bay, 56,263-----	1:00
Cleveland at New Orleans, 72,794-----	1:00
Dallas at New York Giants, 62,815-----	1:00
Denver at San Diego, 44,347-----	1:00
Houston at Buffalo, 28,107-----	1:00
New England at New York Jets, 63,175-----	1:00
Oakland at Kansas City, 51,215-----	3:00
Pittsburgh at Cincinnati, 60,022-----	1:00
St. Louis at Philadelphia, 65,358-----	1:00
Monday, December 13:	
Washington at Los Angeles, 80,402-----	6:00

FOURTEENTH WEEK

Saturday, December 18:	
St. Louis at Dallas, 66,672-----	3:00
Sunday, December 19:	
Atlanta at New Orleans, 75,554-----	1:00
Buffalo at Kansas City, 48,121-----	1:00
Cincinnati at New York Jets, 63,151-----	1:00
Cleveland at Washington, 53,041-----	1:00
Detroit at San Francisco, 45,580-----	1:00
Green Bay at Miami, 76,812-----	1:00
Los Angeles at Pittsburgh, 45,233-----	1:00
Minnesota at Chicago, 55,049-----	1:00
New England at Baltimore, 57,942-----	2:00
Oakland at Denver, 56,651-----	2:00
Philadelphia at New York Giants, 62,774-----	1:00
San Diego at Houston, 35,959-----	1:00

DIVISIONAL PLAYOFF GAMES

Saturday, December 25:	
American Conference Division Playoff—Miami at Kansas City, 45,822	
National Conference Division Playoff—Dallas at Minnesota, 47,307	
Sunday, December 26:	
American Conference Divisional Playoff—Baltimore at Cleveland, 70,734	
National Conference Divisional Playoff—Washington at San Francisco, 45,327	

CHAMPIONSHIP GAMES, SUPER BOWL VI AND PRO BOWL

Sunday, January 2:	
American Conference Championship Game—Baltimore at Miami, 76,622	
National Conference Championship Game—San Francisco at Dallas, 63,409	
Sunday, January 16:	
Super Bowl VI at New Orleans, La.—Dallas vs Miami, 81,023	
Sunday, January 23:	
AFC-NFC Pro Bowl at Los Angeles—AFC vs NFC, 53,647	

NATIONAL FOOTBALL CONFERENCE SEASON TICKET COMPARISON

	1967	1968	1969	1970	1971
Atlanta.....	47,000	38,475	38,493	43,808	43,771
Chicago.....	36,226	36,335	36,395	36,313	47,883
Dallas.....	30,123	30,672	32,401	31,500	31,000
Detroit.....	40,404	39,149	39,189	39,823	42,565
Green Bay:					
Green Bay.....	49,861	49,861	48,828	54,260	54,260
Milwaukee.....	46,000	45,009	41,335	46,320	46,320
Los Angeles.....	24,722	29,385	37,988	45,000	45,246
Minnesota.....	33,187	30,806	37,165	40,658	41,578
New Orleans.....	33,300	40,623	53,051	52,050	51,751
New York.....	58,594	59,026	58,788	60,000	58,502
Philadelphia.....	53,558	52,204	55,144	51,924	56,593
St. Louis.....	37,023	39,331	40,308	38,308	40,379
San Francisco.....	18,963	17,642	18,721	20,000	41,230
Washington.....	46,033	46,327	47,254	49,530	52,008
Total.....	508,994	509,836	543,723	563,174	607,766
Average.....	39,153	39,218	41,824	43,321	46,751

Source: NFL.

AMERICAN FOOTBALL CONFERENCE SEASON TICKET COMPARISON

	1967	1968	1969	1970	1971
Baltimore.....	50,168	50,246	50,203	49,883	49,367
Buffalo.....	23,569	21,276	22,654	22,558	21,671
Cincinnati.....		17,500	21,707	48,840	54,000
Cleveland.....	45,149	44,779	46,398	50,048	48,450
Denver.....	24,650	27,348	31,936	43,580	47,813
Houston.....	10,406	29,423	30,747	30,000	27,214
Kansas City.....	33,118	35,616	42,031	42,031	41,986
Miami.....	13,050	14,920	17,428	25,982	44,834
New England.....	13,226	10,539	8,454	21,572	40,493
New York.....	51,420	54,888	58,000	58,133	58,137
Oakland.....	16,500	24,500	37,392	50,578	50,614
Pittsburgh.....	14,512	14,537	15,725	22,830	25,076
San Diego.....	24,301	22,284	23,904	27,940	30,045
Total.....	332,069	368,856	406,579	493,975	491,100
Average.....	26,672	28,373	31,275	37,998	37,777

Source: NFL.

Appendix D

ARTICLE X OF THE CONSTITUTION AND BYLAWS FOR THE NATIONAL FOOTBALL LEAGUE

ARTICLE X—BROADCASTING AND TELEVISION

Contract Conditions

10.1 Any contract entered into by any club for telecasting or broadcasting its games shall be subject to the conditions that:

(a) The sponsor, the contract itself, the broadcasters who telecast or broadcast such games, and the men who do the color, also any person or persons who do a pre-game or post-game show from inside the park, must have the written approval of the Commissioner of the League. All holders of contracts with the League teams shall present to the Commissioner of the League in writing three (3) names each for the men who will do the television, radio, color, and pre-game and/or post-game shows and the Commissioner shall select one of such persons for each of the above duties on the basis of what he believes to be in the best interest of the game and the League.

(b) Any broadcaster may be removed by the Commissioner for conduct considered by the Commissioner as detrimental to the League.

(c) The Constitution and By-Laws of the League as amended from time to time, shall be applicable to any person performing such function.

Television Restrictions

10.2 Subject to the limitations and exceptions set forth in this Article, member clubs participating in any game are authorized to telecast and broadcast such game anywhere except as follows:

(a) No club shall cause or permit a game in which it is engaged to be telecast into any area included within the home territory of any other club on the day that such other club is engaged in playing a game at home.

(b) No telecast of a home game within the home territory of a club shall be caused or permitted, except by agreement between the participating clubs.

(c) Each home club grants to the visiting club the exclusive right to permit or license the telecast of the game being played between them back to the home territory of the visiting club.

The Commissioner will not approve any contracts that do not contain a provision stating that the contract is subject to Article X as now or hereafter in effect.

Television Income

10.3 All regular season (and pre-season network) television income will be divided equally among all member clubs of the League regardless of the source of such income.

Network Provisions

10.4 In any network television contract in effect in the League after 1970 the following provisions shall apply:

(a) Each regular season road game of the New York Giants, New York Jets, Oakland Raiders and San Francisco 49ers will be televised live back to the home territory of the club participating in the road game.

(b) Every effort shall be made to avoid direct conflicts between the televising of road games of either the New York Giants or New York Jets with any home game of either club.

(c) Without the prior consent of the home team no road game of either the Oakland Raiders or the San Francisco 49ers respectively may be televised back to the home territory of the other club on any day when the other club is playing a game at home.

Championship Games

10.5 The sale of radio and television and film rights for the World and Conference Championship Games shall be under the sole jurisdiction of the Commissioner and be subject to the provisions of Article X.

In the World and Conference Championship Games:

(1) The participating clubs may broadcast by radio on a non-exclusive basis from a station located in its home territory; provided, (a) said club contributes to the gross receipts of the game (to be divided in the same manner as game receipts are distributed) a fair and equitable sum fixed by the Commissioner in his role and absolute discretion; and (b) provided the Commissioner approves all sponsors and broadcasters involved in the game.

(2) No television station may carry or broadcast the game if its signal is visible in the home territory (75 miles) of the home club in the city where the game is being played. The Commissioner's decision in this matter shall be final.

Broadcast Facilities

10.6 Each club when playing at home shall provide adequate space for use of the visiting club in telecasting and/or broadcasting each game.

Player Depiction and Club Promotion

10.7 The player grants to the club controlling his contract and to the League severally and jointly, the privilege and authority to use his name and/or picture for publicity and/or advertising purposes in newspapers, magazines, motion pictures, game programs and annual roster manuals, radio material, television telecast, and all other publicity and/or advertising media providing such publicity and/or advertising does not in itself constitute an endorsement by that individual player of a commercial product.

Judgment

10.8 All provisions of Article X are intended to conform to and are subject to the Final Judgment of the United States District Court for the Eastern District of Pennsylvania entered December 28, 1953, and as thereafter modified, against the National Football League and certain of its member clubs; in the event of any conflict between the Constitution and By-Laws and said judgment, the provisions of said Final Judgment, as modified, shall prevail.

STATIONS SUBJECT TO LEAGUE HOME TERRITORY BLACKOUT POLICY

Home city	In-city stations	Others
Atlanta	ABC-WOXI NBC-WSB CBS-WAGA	None.
Baltimore	ABC-WJZ NBC-WBAL CBS-WMAR	NBC-Hagerstown-WHAG. NBC-Harrisburg-WGAL. CBS-Harrisburg-WHP. CBS-York-WSBA. ABC-York-WTPA. CBS-Lancaster-WLYH.
Boston	CBS-WNAC NBC-WBZ ABC-WCVB	ABC-Providence-WTEV. NBC-Providence-WJAR. CBS-Providence-WPRI. ABC-Manchester, N.H.-WMUR.
Buffalo	ABC-WKBW NBC-WGR CBS-WBEN	ABC-Rochester-WOKR. NBC-Rochester-WROC. CBS-Rochester-WHEC. ABC-Erie-WJET. NBC-Erie-WICU. CBS-Erie-WSEE.
Chicago	ABC-WLS NBC-WMAQ CBS-WBBM	None.
Cincinnati	ABC-WKRC NBC-WLW CBS-WCPO	ABC-Dayton-WKEF. NBC-Dayton-WLWD. CBS-Dayton-WHIO. ABC-Lexington-WBLU. NBC-Lexington-WLEX. CBS-Lexington-WKYT.
Cleveland	ABC-WEWS NBC-WKYC CBS-WJW	ABC-Youngstown-WYT. NBC-Youngstown-WFMJ. CBS-Youngstown-WKBN. ABC-Akron/Canton-WAKR.
Denver	ABC-KBTV NBC-KOA CBS-KLZ	ABC-Pueblo-KRDO. NBC-Pueblo-KOAA. CBS-Pueblo-KKTV.
Dallas	ABC-WFAA NBC-WBAP CBS-KDFW	ABC/CBS-Waco-KWTX. ABC/NBC-Tyler-KLTV. ABC/NBC/CBS-Sherman-KXII.
Detroit	ABC-WXYZ NBC-WJW CBS-WJBK	NBC-Lansing-WILX. CBS-Lansing-WJIM. ABC-Toledo-WDHO. NBC-Toledo-WSPD. CBS-Toledo-WTOL. ABC-Flint-WJRT.
Green Bay	ABC-WLUK ¹ NBC-WFRV ¹ CBS-WBAY ¹	ABC-Wausau-WAOW. ¹ CBS-Wausau-WSAU. ¹ ABC-Milwaukee-WITI. ² NBC-Milwaukee-WTMJ. ² CBS-Milwaukee-WISN. ²
Houston	ABC-KTRK NBC-KPRC CBS-KHOU	ABC/NBC-Lufkin-KTRE. ABC/CBS-Bryan-KBTX. ABC-Beaumont-KBMT. NBC-Beaumont-KJAC. CBS-Beaumont-KFDM.
Kansas City	ABC-KMBC NBC-WDAF CBS-KCMO	NBC-Topeka-KTSB. CBS-Topeka-WIBW. ABC-St. Joseph-KQTV.
Los Angeles	ABC-KABC NBC-KNBC CBS-KNXT	ABC-San Diego-XETV. NBC-San Diego-KOGO. CBS-San Diego-KFMB.
Miami	ABC-WPLG NBC-WCKT CBS-WTVJ	ABC-San Diego-KFMB. NBC-West Palm Beach-WEAT. NBC-West Palm Beach-WPTV.
Minneapolis/St. Paul	ABC-KMSP NBC-KSTP CBS-WCCO	CBS-Mankato-KEYC. CBS-Mason City-KGLO. NBC-Alexandria-KCMT. NBC-Rochester-KROC. ABC-Austin-KAUS.
New Orleans	ABC-WVUE NBC-WDSU CBS-WWL	ABC/CBS-Baton Rouge-WAFB. NBC-Baton Rouge-WBRZ.
New York	ABC-WABC NBC-WNBC CBS-WCBS	None.
Oakland	ABC-KGO NBC-KRON CBS-KPIX	ABC-Sacramento-KOVR. NBC-Sacramento-KCRA. CBS-Sacramento-KXTV. NBC/CBS-Sacramento-KTXL. NBC-Salinas/Monterey-KSBW. CBS-Salinas/Monterey-KMST. ABC-San Jose-KNTV.

STATIONS SUBJECT TO LEAGUE HOME TERRITORY BLACKOUT POLICY

Home city	In-city stations	Others
Philadelphia	ABC-WPVI NBC-KYW CBS-WCAU	Harrisburg/Lancaster/Lebanon. ABC-WTPA. NBC-WGAL. CBS-WLYH. Scranton-Wilkes-Barre. ABC-WNEP. NBC-WBRE. CBS-WDAU.
Pittsburgh	ABC-WTAE NBC-WIIC CBS-KDKA	NBC-Altoona-WJAC. CBS-Altoona-WFBG. CBS-Johnstown-WARD. ABC/CBS-Wheeling-WSTV. NBC-Steubenville-WTRF. Youngstown. ABC-WYTV. NBC-WFMJ. CBS-WKBN. Clarksburg/Weston. NBC-WBOY. CBS-WDTV.
San Francisco	Same as Oakland	
St. Louis	ABC-KTVI NBC-KSD CBS-KMOX	None.
San Diego	ABC-XETV NBC-KOGO CBS-KFMB	ABC-Los Angeles-KABC. NBC-Los Angeles-KNBC. CBS-Los Angeles-KNXT.
Washington	ABC-WMAL NBC-WRC CBS-WTOP	None.

¹ Not blacked out when Green Bay plays in Milwaukee.

² Not blacked out when Green Bay plays at home.

Source: National Football League.

CABLE TELEVISION SYSTEMS WITHIN GRADE B CONTOURS OF TELEVISION STATIONS
LOCATED IN HOME CITIES OF MAJOR LEAGUE PROFESSIONAL SPORTS TEAMS

(Prepared and submitted by the National Cable Television Association in FCC
Docket No. 19417)

SUMMARY

Thirty-four television markets contain the home cities of all major league professional sports teams.

758 cable systems lie within the Grade B Contours of TV stations in the 34 television markets.¹

2,013,730 cable television subscribers are served by the 758 cable systems;¹ or 36.6 percent of the nation's estimated 5.5 million cable subscribers.

¹ Data compiled from 1971-1972 Edition of *Television Factbook*.

U.S. CITIES WITH ONE OR MORE PROFESSIONAL MAJOR LEAGUE SPORTS TEAM

TV market number and city	Baseball	Football	Basketball	Hockey
18 Atlanta	X	X	X	
14 Baltimore	X	X	X	
6 Boston	X	X	X	X
24 Buffalo	X	X	X	X
3 Chicago	2X	X	X	X
17 Cincinnati	X	X	X	
8 Cleveland	X	X	X	
12 Dallas	X	X	X	
32 Denver	X	X	X	
5 Detroit	X	X	X	X
63 Green Bay		X		
47 Greensboro, N.C.			X	
15 Houston	X	X	X	
16 Indianapolis			X	
22 Kansas City	X	X		
2 Los Angeles (Anaheim)	2X	X	X	X

U.S. CITIES WITH ONE OR MORE PROFESSIONAL MAJOR LEAGUE SPORTS TEAM—Continued

TV market number and city	Baseball	Football	Basketball	Hockey
38 Louisville				
26 Memphis			X	
21 Miami			X	
23 Milwaukee		X		
13 Minneapolis	X		X	
31 New Orleans	X	X		X
1 New York				
44 Norfolk	2X	2X	2X	X
4 Philadelphia			X	
43 Phoenix	X	X	X	X
10 Pittsburgh			X	
29 Portland	X	X		X
11 St. Louis			X	
49 Salt Lake City	X	X		X
52 San Diego			X	
7 San Francisco (Oakland)	X	X		
20 Seattle	2X	2X	X	X
9 Washington, D.C.		X	X	

Cable systems within grade B contours of television stations located in home cities of major professional sports teams

City	Number of cable systems
Atlanta	9
Baltimore	33
Boston	23
Buffalo	41
Chicago	10
Cincinnati	12
Cleveland	28
Dallas	16
Denver	7
Detroit	8
Green Bay	2
Greensboro	28
Houston	6
Indianapolis	27
Kansas City	9
Los Angeles (Anaheim)	97
Louisville	14
Memphis	12
Miami	8
Milwaukee	4
Minneapolis	5
New Orleans	11
New York	47
Norfolk	8
Philadelphia	71
Phoenix	3
Pittsburgh	111
Portland	38
St. Louis	6
Salt Lake City	4
San Diego	20
San Francisco (Oakland)	57
Seattle	34
Washington, D.C.	19
City by city total	828
Less Number of Cable Systems listed more than once, which lie within two or more overlapping Grade B contours	70
Grand total	758

Summary: 758 cable systems, or 27% of estimated 2,800 CATV systems in the United States.

CABLE SYSTEMS WITHIN GRADE B CONTOURS OF TV STATIONS

City/State	Name of cable system	Number of subscribers
ATLANTA, GA.		
Athens, Ga.	George Cablevision Corp.	2,331
Cedartown, Ga.	Cablevision of Cedartown	1,612
Cornelia, Ga.	Multi-View TV, Inc.	575
De Kalb County, Ga.	De Kalb Cablevision Corp.	1,200
Ellijay, Ga.	Community TV Co.	(1)
Gainesville, Ga.	Gainesville Cablevision Co.	2,000
La Grange, Ga.	Community Telecable of Georgia, Inc.	2,300
Rome, Ga.	Rome Cable TV Co., Inc.	8,500
Smyrna, Ga.	Electrovision, Inc.	2,200
Total		20,718
BALTIMORE, MD.		
Aberdeen, Md.	Multiview Cable Co.	(1)
Bel Air, Md.	do.	(1)
Boonsboro, Md.	Tri-State Cable TV, Inc.	526
Cambridge, Md.	Cambridge Cable TV, Inc.	1,608
Frederick, Md.	Frederick Cablevision Inc.	2,300
Hagerstown, Md.	Antietam Cable TV	4,000
Havre de Grace, Md.	Multiview Cable Co.	(1)
Smithsburg, Md.	Tri-State Cable TV, Inc.	455
St. Charles Community, Md.	St. Charles CATV, Inc.	(1)
Reston, Va.	Reston Transmission Co.	1,800
Woodbridge, Va.	Cable TV, Inc.	3,200
Carlisle, Pa.	TV Cable of Carlisle, Inc.	2,000
Chambersburg, Pa.	Cypress Cable TV	5,333
Columbia, Pa.	H. C. Ostertag Cable TV Co., Inc.	800
Downingtown, Pa.	Suburban Cable TV Co., Inc.	200
Ephrata, Pa.	D. & E. Cable TV, Inc.	3,700
Gettysburg, Pa.	Gettysburg TV Cable, Inc.	700
Hanover, Pa.	Penn-Mar CATV, Inc.	3,000
Harrisburg, Pa.	Perfect TV, Inc.	26,000
Hershey, Pa.	Valley Video Cable Co.	2,200
Lancaster, Pa.	Cable TV Associates	8,000
Lebanon, Pa.	Lebanon Valley Cable TV Co., Inc.	4,907
Lititz, Pa.	D. & E. Cable TV, Inc.	(1)
Marietta, Pa.	Cypress Cable TV, Inc.	2,100
Mechanicsburg, Pa.	West Shore TV Cable Co.	2,000
New Holland, Pa.	Enterprise TV Cable Co., Inc.	900
Shippensburg, Pa.	Shippens TV and Cable Co.	1,350
Waynesboro, Pa.	TV Cable of Waynesboro, Inc.	2,500
York, Pa.	Cable TV Co. of York	10,300
Dover, Del.	Delaware Teleservice Co.	6,000
Milford, Del.	General TV, Inc.	1,200
Wilmington, Del.	Cablevision of Delaware	7,500
Salem, N.J.	Tri-County CATV	2,000
Total		106,579
BOSTON, MASS.		
Amherst, Mass.	Pioneer Valley Cablevision, Inc.	1,500
Athol, Mass.	Mohawk Valley TV	3,000
Charlemont, Mass.	Charlemont TV	45
Fitchburg, Mass.	Montachusett Cable TV, Inc.	2,300
Gardner, Mass.	do.	1,025
Gilbertville, Mass.	Pioneer Valley Cablevision, Inc.	(1)
Greenfield, Mass.	do.	4,300
Haverhill, Mass.	Stan Fran Corp. Cable TV	2,800
Holyoke, Mass.	Video Enterprises, Inc.	1,000
Hyannis, Mass.	Cape Cod Cablevision Corp.	3,065
Leominster, Mass.	Montachusett Cable TV, Inc.	1,000
Malden, Mass.	Malden Cablevision Co.	(1)
Palmer, Mass.	Pioneer Valley Cablevision, Inc.	2,061
Shelburne Falls, Mass.	Shelburne Falls Community Antenna Service	666
Southbridge, Mass.	Quinebaug Valley Cablevision, Inc.	2,900
Ware, Mass.	Pioneer Valley Cablevision, Inc.	912
Westerly, R.I.	Westerly Cable TV, Inc.	2,000
Concord, N.H.	TeleCable, Inc.	4,100
Hudson, N.H.	Hudson Cablevision Corp.	500
Keene, N.H.	TeleProm Ter of Keene	5,800
Nashua, N.H.	Merrimack Valley CATV, Inc.	2,510
Bellows Falls, Vt.	Bellows Falls Cable	1,514
Brattleboro, Vt.	Brattleboro TV, Inc.	3,275
Total		46,273

CABLE SYSTEMS WITHIN GRADE B CONTOURS OF TV STATIONS—Continued

City/State	Name of cable system	Number of subscribers
BUFFALO, N.Y.		
Alfred, N.Y.	Alfred Cable System	450
Allentown, N.Y.	Southern Tier TV Cable, Inc.	75
Amherst, N.Y.	Frontier TV, Inc.	2,500
Andover, N.Y.	New Channels Corp.	266
Arkport, N.Y.	Arkport TV Service	(1)
Avoca, N.Y.	Avoca TV Cable, Inc.	353
Bath, N.Y.	Bath TV Service Co., Inc.	(1)
Boston Valley, N.Y.	Boston Valley Cable TV Co.	(1)
Bolivar, N.Y.	Bolivar TV Cable Co.	207
Canisteo, N.Y.	Canisteo TV, Inc.	380
	Hornell TV Service, Inc.	400
Cochocton, N.Y.	Brown's TV Cable Service	200
Cuba, N.Y.	Cuba Cable Co.	250
Danville, N.Y.	Bradley TV Cable Service, Inc.	1,600
Greenswood, N.Y.	New Channels Corp.	132
Hornell, N.Y.	Hornell TV Service, Inc.	4,300
Jamestown, N.Y.	Jamestown Cablevisioi, Inc.	7,500
Lackawanna, N.Y.	Lackawanna Cablevision, Inc.	50
Jasper, N.Y.	Jasper Video	73
Naples, N.Y.	Community Cable Corp. of New York	300
Niagara, N.Y.	STV Cable TV, Inc.	(1)
Olean, N.Y.	Allband Cablevision	6,300
	Nicholas Radio & TV Service, Inc.	100
Portville, N.Y.	Butternut Brook Cable Co.	(1)
	Allband Cablevision	300
Salamanca, N.Y.	Salamanca TV Cable, Inc.	1,700
Warsaw, N.Y.	Warsaw TV Cable Corp.	550
Whitesville, N.Y.	Fitzpatrick Community TV System	155
Wellsville, N.Y.	Allegany Video, Inc.	3,250
Bradford, Pa.	Bradford TV Cable Co.	6,250
	Parkway Antenna Co.	150
Clarendon, Pa.	Clarendon TV Association	400
Corry, Pa.	Corry TV Cable Co.	2,005
Coudersport	Coudersport TV Cable Co.	900
Kane, Pa.	Centre Video Corp.	1,800
Smethport, Pa.	Marvin St. TV Association	130
	South Side TV, Inc.	160
Warren, Pa.	West Side TV Corp.	245
	Roundtop TV Association	117
	Warren TV	5,551
Youngsville, Pa.	Youngsville TV Corp.	850
Total		50,249
CHICAGO, ILL.		
Belvidere, Ill.	Trident Enterprises	69
Chicago, Ill.	Cor-Plex International Corp.	(1)
De Kalb, Ill.	Allied Video Transmission Corp.	5,000
Dwight, Ill.	Dwight Perfect Picture TV, Inc.	650
Joliet, Ill.	Joliet Cable TV	337
Kankakee, Ill.	Kankakee TV Cable Co.	9,900
Morris, Ill.	Morris CATV, Inc.	1,200
Ottawa, Ill.	Ottawa TV Cable Co., Inc.	7,100
Rensselaer, Ind.	TV Cable Co. of Rensselaer, Inc.	1,493
Racine, Wis.	Racine TeleCable Corp.	(1)
Total		25,749
CLEVELAND, OHIO		
Akron, Ohio	Akron Cablevision, Inc.	10,000
Ashland, Ohio	Armstrong Utilities, Inc.	525
Ashtabula, Ohio	Ashtabula Cable TV, Inc.	4,633
Bellevue, Ohio	Continental Cablevision of Ohio	400
Benton, Ohio	Wired TV System	30
Canton, Ohio	Imperial Broadcasting Co.	13,000
Coshocton, Ohio	Tower Communications, Inc.	5,150
Crestline, Ohio	Continental Cablevision of Ohio	900
Glenmont, Ohio	Glenmont Cable TV	84
Gnadenhutten, Ohio	Tower Communications, Inc.	231
Killbuck, Ohio	Millersburg Community TV System, Inc.	210
Lisbon, Ohio	Lisbon Cable TV Corp.	665
Loudonville, Ohio	Ashland County Cable Service, Inc.	820
Mansfield, Ohio	Multi-Channel TV Cable Co.	11,000
Massillon, Ohio	Massillon Cable TV, Inc.	5,300
Millersburg, Ohio	Millersburg Community TV System	750
Shaker Heights, Ohio	Telerama, Inc.	7,000
Shelby, Ohio	Multi-Channel TV Cable Co. of Shelby	1,800
Strasburg, Ohio	Village TV Co., Inc.	400

CABLE SYSTEMS WITHIN GRADE B CONTOURS OF TV STATIONS—Continued

City/State	Name of cable system	Number of subscribers
CLEVELAND, OHIO—Continued		
Sugarcreek, Ohio	Tower Communications, Inc.	475
Uhrichsville, Ohio	do	2,700
Warsaw, Ohio	do	225
Willard, Ohio	Continental Cablevision of Ohio, Inc.	1,100
Wooster, Ohio	Clear Picture, Inc.	2,400
Conneautville, Pa.	Valley Master Cable, Inc.	385
Farrell, Pa.	Tex-Video, Inc.	650
Greenville, Pa.	Blatt Bros. Cable TV Corp.	1,650
Sharon, Pa.	Shenango Cable TV, Inc.	2,100
Total		74,583
DALLAS, TEX.		
Athens, Tex.	Athens TV Cable Co.	(1)
Commerce, Tex.	TV Cable Co. of Commerce, Inc.	2,060
Denison, Tex.	Cablecom General, Inc.	3,809
Fairfield, Tex.	Central Texas TV Cable Co.	440
Gainesville, Tex.	Carter Cable TV of Gainesville	1,600
Greenville, Tex.	Greenville Cablevision, Inc.	4,100
Hico, Tex.	Telco, Inc.	200
Jacksboro, Tex.	Jacksboro Cable TV Co.	500
Mexia, Tex.	Continental Transmission Corp.	1,040
Mineral Wells, Tex.	Community Aerial Systems	4,200
Muenster, Tex.	North Texas Communications Co.	180
Perrin AFB	Perrin AFB	300
Sherman, Tex.	Cablecom-General, Inc.	6,400
Stephenville, Tex.	Cypress Cable TV of Texas	2,383
Waco, Tex.	TV Cable of Waco, Inc.	7,500
Whitesboro, Tex.	Telstar TV, Inc.	350
Total		35,062
DENVER, COLO.		
Boulder, Colo.	Comunico	1,000
Colorado Springs, Colo.	Vumore Video Corp. of Colorado	13,075
Estes Park, Colo.	Cablevision of Estes	550
Evergreen, Colo.	Silver King Cable Co.	350
Fort Morgan, Colo.	Fort Morgan Cable TV	200
Manitou Springs, Colo.	Vumore Video Corp. of Colorado	940
Vail, Colo.	Vail Cable TV Co.	20
Total		16,315
DETROIT, MICH.		
Adrian, Mich.	GTEC Cable TV, Inc.	1,400
East Lansing, Mich.	National Cable Co., Inc.	1,200
Flint, Mich.	Flint Cable TV	11,000
	Lakeside Mobile Court	200
Jackson, Mich.	Continental Cablevision of Michigan	8,000
Lansing, Mich.	Capital Cablevision	150
Port Huron, Mich.	Port Huron TV Cable Co.	6,500
Toledo, Ohio	Buckeye Cablevision, Inc.	16,513
Total		44,963
GREEN BAY, WIS.		
Marinette, Wis.	Marcus CATV, Inc.	2,000
Stevens Point, Wis.	Teltron Cable TV	1,608
Total		3,608
GREENSBORO, N.C.		
Boone, N.C.	United Antenna Service of Boone	1,300
Burlington, N.C.	Cablevision of Alamance County	1,198
Charlotte, N.C.	Cablevision of Charlotte	7,000
Charlotte, N.C.	Cox-Cosmos, Inc.	5,000
Fayetteville, N.C.	Fayetteville Cablevision	13,500
Greensboro, N.C.	Jefferson-Carolina Corp.	5,064
Lenoir, N.C.	Lenoir TV Cable, Inc.	1,200
Raleigh, N.C.	Southeastern Cablevision, Inc.	9,600
Rockingham, N.C.	Cablevision of Rockingham-Hamlet	2,045
Salisbury, N.C.	Cablevision of Salisbury, Inc.	1,600
Sanford, N.C.	Cablevision of Sanford	420
West Jefferson, N.C.	Blue Ridge TV Cable Co., Inc.	650
Winston-Salem	Tele-Cable of Winston-Salem	2,500
Blacksburg, Va.	Blacksburg TV Cable	(1)
Christiansburg, Va.	Christiansburg TV cable	(1)

CABLE SYSTEMS WITHIN GRADE B CONTOURS OF TV STATIONS—Continued

City/State	Name of cable system	Number of subscribers
GREENSBORO, N. C.—Continued		
Danville, Va.	Danville Cablevision Co.	1,300
Galax, Va.	Cypress Cable TV	701
Marion, Va.	Home & Auto Supply Co.	1,750
Martinsville, Va.	Martinsville Cablevision, Inc.	2,946
Pulaski, Va.	Pulaski TV Cable	1,350
Radford, Va.	Clear-View Cable TV Co.	(1)
Salem, Va.	Salem TV Cable Co.	200
Tazewell, Va.	TelePrompTer of Tazewell	1,129
Wytheville, Va.	TeleCable Development Corp.	400
Mountain City, Tenn.	Mountain City Cable Co., Inc.	205
Bluefield, W. Va.	Bluefield Cable Corp.	5,460
Bluewell, W. Va.	Bluewell TV Cable, Inc.	420
Princeton, W. Va.	Princeton TeleCable Corp.	2,200
Total		69,138
HOUSTON, TEX.		
Conroe, Tex.	Tele-Vue Systems, Inc.	1,000
Galveston, Tex.	TelePrompTer of Galveston	4,500
Ganado, Tex.	Cable-Vision	210
Liberly, Tex.	Liberty-Dayton CATV, Inc.	600
Navasota, Tex.	Cypress Cable TV	808
Palacios, Tex.	Palacios TV Cable Corp.	650
Total		7,768
INDIANAPOLIS, IND.		
Attica, Ind.	Attica TV Communications, Inc.	1,882
Bedford, Ind.	Bedford TV Cable, Inc.	2,836
Bloomfield, Ind.	Bloomfield Cable TV, Inc.	339
Bloomington, Ind.	Monroe All-Channel Cablevision, Inc.	2,985
Clinton, Ind.	Clinton Cable TV Co., Inc.	(1)
Columbus, Ind.	Columbus Communications Corp.	2,105
Covington, Ind.	Covington Cable TV, Inc.	700
Crawfordsville, Ind.	Crawfordsville Community Cable Corp.	2,300
Delphi, Ind.	First TV Corp.	341
Dugger, Ind.	Dugger Cable TV, Inc.	103
Greencastle, Ind.	Putnam All Channel Cable Vision, Inc.	506
Hartford City, Ind.	Hartford City Cable TV, Inc.	350
Jonesboro, Ind.	Brown's, Inc.	150
Kokomo, Ind.	Telecable of Kokomo, Inc.	(1)
Lafayette, Ind.	Greater Lafayette TV Cable Co., Inc.	14,500
Linton, Ind.	Linton Cable TV, Inc.	764
Logansport, Ind.	Logansport TV Cable Co., Inc.	6,215
Madison, Ind.	TV Cable Service of Madison, Inc.	1,300
Marion, Ind.	Marion Cable TV, Inc.	10,100
Mitchell, Ind.	Mitchell Cable TV	250
Monticello, Ind.	Total Communications Cable Co.	(1)
Peru, Ind.	Hooster Telecable	5,079
Richmond, Ind.	Clearview Cable of Richmond, Inc.	(1)
Sullivan, Ind.	Sullivan TV Cable Co.	932
Terre Haute, Ind.	Indiana Cable TV, Inc.	9,200
Wabash, Ind.	Hooster Telecable	2,655
Winchester, Ind.	GTE Communications	1,000
Total		66,592
KANSAS CITY, MO.		
Clinton, Mo.	Clinton Cablevision System, Inc.	1,149
Knob Noster, Mo.	Knob Noster Cable, Inc.	532
St. Joseph, Mo.	St. Joseph Cablevision	9,000
Warrensburg, Mo.	Cypress Cable TV	775
	Warrensburg Cable, Inc.	394
Whiteman AFB, Mo.	Whiteman AFB	1,032
Windsor, Mo.	Cypress Cable TV	389
Atchison, Kans.	Atchison Cablevision, Inc.	1,000
Kansas City, Kans.	Midway Cable TV	526
Total		13,797
LOS ANGELES, CALIF.		
Agean Hills, Calif.	Times-Mirror Corp.	660
Altadena, Calif.	Tru-Vu Cable	1,200
Alta Loma, Calif.	International Cable TV Corp.	300
Apple Valley, Calif.	Apple Valley TV Cable Co.	1,000
Arcadia, Calif.	National Trans Video, Inc.	103
Arvin, Calif.	Cablevision	2,300

CABLE SYSTEMS WITHIN GRADE B CONTOURS OF TV STATIONS—Continued

City/State	Name of cable system	Number of subscribers
LOS ANGELES, CALIF.—Continued		
Banning, Calif.	Storer Cable TV, Inc.	1, 098
Bell Canyon	Theta Cable of California	(1)
Big Bear Lake, Calif.	Continental Transmission Corp.	2, 357
Boron, Calif.	Pacific Masters System	500
Borrego Springs, Calif.	Tele-Cable Service Corp.	400
Brea, Calif.	Cablecom General of Southern California	(1)
Calabasas, Calif.	TeSCO TV-FM Cable Co.	152
California City	Desert Video Co.	120
Camarillo, Calif.	Harriscope Broadcasting Co.	50
Desert Hot Springs, Calif.	Video Communications, Inc.	880
Duarte, Calif.	International Cable TV Corp.	197
Edwards AFB, Calif.	WGN Electronic Systems Co.	2, 000
El Rancho Green Valley	Lstronics, Inc.	100
Escondido, Calif.	Escondido Cable TV	6, 088
Fallbrook, Calif.	Pala Mesa Cabelvision, Inc.	850
Glendale, Calif.	National Trans-Video, Inc.	3, 150
Hemet, Calif.	Riverside Cable Co.	500
Hermosa Beach, Calif.	Storer Cable TV, Inc.	2, 482
Highland, Calif.	Mountain Cable TV, Inc.	7, 400
Irvine, Calif.	Community Cablevision Co.	2, 500
Kagel Canyon, Calif.	International Cable TV Corp.	100
La Canada, Calif.	do	(1)
La Crescenta, Calif.	National Trans-Video, Inc.	1, 170
Laguna Beach, Calif.	Storer Cable TV, Inc.	5, 759
Laguna Niguel, Calif.	Southern California Video, Inc.	1, 500
La Habra, Calif.	Cablecom General of Southern California	(1)
Lake Arrowhead, Calif.	Skyline TV Cable Co.	1, 900
Lake Hollywood Tract	Hoffman Electronics Corp.	70
Lake Hughes, Calif.	Lake Hughes TV Cable Service	130
Lancaster, Calif.	WGN Electronic Systems Co.	650
Los Angeles, Calif.	Seven Hills Cable Service	6, 152
	Theta Cable of California	27, 500
Malibu, Calif.	Cypress Cable TV of Malibu, Inc.	2, 336
Marina Del Rey, Calif.	Theta Cable of California	2, 6
Mission Viejo, Calif.	Mission Viejo Cablevision	713
Monrovia, Calif.	International Cable TV Corp.	300
New Cuyama, Calif.	Avenue TV Cable Service, Inc.	158
Newhall, Calif.	Valley County Cable TV, Inc.	4, 908
Newport Beach, Calif.	Newport Beach Cablevision, Inc.	1, 500
Oceanside, Calif.	TV Power of North County, Inc.	5, 000
Ojai, Calif.	Southern California Cable Corp.	3, 783
Palisades Bowl, Calif.	TeSCO TV-FM Cable	94
Palmdale, Calif.	WGN Electronic Systems Co.	3, 000
Palm Desert, Calif.	Coachella Valley TV	11, 550
Palm Springs, Calif.	Palm Springs TV Co.	15, 816
Palos Verdes Peninsula	Palos Verdes Peninsula Cable Communication Co.	5, 916
Parker Mesa, Calif.	TeSCO TV-FM Cable	403
Pasadena, Calif.	International Cable TV Corp.	459
Perris, Calif.	Video Communications, Inc.	200
Poway, Calif.	Poway Cable TV	106
Rancho Bernardo, Calif.	Rancho Bernardo Antenna System	2, 800
Rancho De Los Penasquitos	Penasquitos Antenna System, Inc.	100
Rancho Verde, Calif.	International Cable TV Corp.	200
Rialto, Calif.	do	300
Sam Woods Beach, Calif.	Big Rock System	159
San Bernardino, Calif.	GTEC Cable TV	6, 905
Do	TV Receptors, Inc.	4, 000
San Clemente, Calif.	San Clemente Cable TV Co.	3, 791
San Diego, Calif.	Mission Cable TV, Inc.	47, 102
Do	Southwestern Cable Co.	6, 000
Do	Omni-Vision, Inc.	50
San Dimas, Calif.	International Cable TV Corp.	1, 200
San Juan Capistrano, Calif.	Storer Cable TV, Inc.	681
Santa Barbara, Calif.	Cable TV of Santa Barbara, Inc.	23, 500
Santa Monica, Calif.	Theta Cable of California	75
Santa Paula, Calif.	Storer Cable TV, Inc.	2, 200
Saugus, Calif.	Western CATV, Inc.	4, 500
Seal Beach, Calif.	Seal Beach Cablevision	1, 600
Searles Valley, Calif.	H. S. Anderson Co.	1, 100
Sierra Madre, Calif.	Foothill TV Cable Co.	2, 430
Signal Hill, Calif.	Signal Hill Cable TV Co.	1, 400
Simi, Calif.	TelePrompter of Simi	3, 075
Simi Valley, Calif.	Valley County Cable TV, Inc.	530
Sycamore Beach, Calif.	Big Sycamore TV Cable	84
Sylmar, Calif.	Magic Mountain TV Cable Co.	3, 003
Tehachapi, Calif.	Cablevision	950
Thousand Oaks, Calif.	Storer Cable TV, Inc.	4, 488
Topanga, Calif.	TeSCO TV-FM Cable	260
Tri-Palms Estates, Calif.	Mobile Life Corp of California	151

CABLE SYSTEMS WITHIN GRADE B CONTOURS OF TV STATIONS—Continued

City/State	Name of cable system	Number of subscribers
LOS ANGELES, CALIF.—Continued		
Trousdale Estates	Theta Cable of Trousdale	530
Tustin, Calif.	Tustin Cable TV Co.	631
Upland, Calif.	International Cable TV Corp.	(1)
Valencia, Calif.	NABCAT, Inc.	1,400
Ventura, Calif.	Avenue TV Cable Service, Inc.	2,943
Do	Ventura Cablevision	1,776
Victorville, Calif.	Continental Transmission Corp.	3,415
West Hollywood, Calif.	Theta Cable of California	193
Westlake Village, Calif.	Westlake Communications, Inc.	1,750
Whittier, Calif.	National Trans-Video, Inc.	1,394
Woodland Hills, Calif.	TeSCo TV-FM Cable System	78
Yucca Valley, Calif.	Hi Desert TV Cable	2,210
Total		276,718
LOUISVILLE, KY.		
Bardstown, Ky.	Kentucky Cable TV, Inc.	300
Carrollton, Ky.	Ohio Valley Cablevision, Inc.	664
Elizabethtown, Ky.	Cable-Vista, Inc.	870
Frankfort, Ky.	Community Service, Inc.	4,900
	Consolidated TV Cable Service, Inc.	3,000
Harrodsburg, Ky.	R.V. Cable-Vision, Inc.	1,675
Hodgenville, Ky.	Kentucky Cable TV, Inc.	161
Leitchfield, Ky.	do	545
Bedford, Ind.	Bedford TV Cable, Inc.	2,836
Columbus, Ind.	Columbus Communications Corp.	2,105
Jasper, Ind.	Dubois CableVision, Inc.	2,016
Madison, Ind.	TV Cable Service of Madison	1,300
Mitchell, Ind.	Mitchell Cable TV	250
Tell City, Ind.	Indiana Cablevision, Inc.	1,049
Total		21,671
MEMPHIS, TENN.		
Dyersburg, Tenn.	TRO Cable, Inc.	1,650
Henderson, Tenn.	Henderson Cable TV	420
Jackson, Tenn.	Jackson Community Antenna, Inc.	4,500
Helena, Ark.	Cable Services, Inc.	348
Jonesboro, Ark.	Jonesboro Cable TV, Inc.	2,900
Paragould, Ark.	Paragould Cablevision, Inc.	1,100
West Helena, Ark.	Cable Services, Inc.	773
Batesville, Miss.	Mississippi Transmission Co.	418
Marks, Miss.	do	423
New Albany, Miss.	New Albany TV Cable, Inc.	1,600
Water Valley, Miss.	Mississippi Transmission Co.	650
Caruthersville, Mo.	Bootheel Vidoe, Inc.	1,690
Total		16,472
MIAMI, FLA.		
Boynton Beach, Fla.	TelePrompter Cable TV of Boynton	22
Golden Gate, Fla.	Gulf Communicators Inc.	225
Lantana, Fla.	TelePrompTer Cable TV of Lantana	12
North Palm Beach, Fla.	Palm Beach Cable TV Co.	4,800
Riviera Beach, Fla.	TelePrompTer of Florida CATV Inc.	498
Tamarac, Fla.	University Video Corp.	700
West Palm Beach, Fla.	TelePrompTer Cable TV of West Palm Beach	1,475
Key West, Fla.	Cable-Vision Inc.	9,497
Total		17,229
MILWAUKEE, WIS.		
Beloit, Wis.	Beloit Community TV Services Inc.	7,000
Janesville, Wis.	Total TV Inc.	7,500
Racine, Wis.	Racine TeleCable Corp.	(1)
Stoughton, Wis.	Viking Media Inc.	(1)
Total		14,500
MINNEAPOLIS, MINN.		
Faribault, Minn.	Faribault Cable TV	1,200
Mankato, Minn.	Minnesota CATV Inc.	8,800
Rochester, Minn.	American Cablevision Co.	12,200
St. Cloud, Minn.	WJON Cablevision Inc.	5,500
Wabasha, Minn.	Wabasha Community TV Signal Co.	425
Total		28,125

CABLE SYSTEMS WITHIN GRADE B CONTOURS OF TV STATIONS—Continued

City/State	Name of cable system	Number of subscribers
NEW ORLEANS, LA.		
Amelia, La.	Kerk's Communication Services Inc.	100
Bogalusa, La.	Uniloy Community Antenna Inc.	1,250
Golden Meadow, La.	Callais Cablevision Inc.	1,500
Franklinton, La.	Uniloy Community Antenna Inc.	170
Morgan City, La.	Allen's TV Service Inc.	1,600
Patterson, La.	All-Channel Antenna Service Inc.	550
Thibodaux, La.	Lafourche Communications Inc.	2,000
Biloxi, Miss.	General Electric Cablevision Corp.	5,880
Gulfport, Miss.	Cablecom-General Inc.	1,900
Long Beach, Miss.	National TV Cable Inc.	1,100
Picayune, Miss.	Uniloy Community Antenna of Miss.	135
Total		16,185
NEW YORK, N.Y.		
Beacon, N.Y.	Beacon Cable Corp.	3,900
Brookhaven, N.Y.	Brookhaven Cable TV, Inc.	2,000
	Suffolk Cablevision	2,000
Cornwall on Hudson, N.Y.	Cornwall Co-Ax, Inc.	(1)
Dover Plains, N.Y.	Pawling Tele-Antenna Systems, Inc.	315
East Quogue, N.Y.	Long Island Cablevision Corp.	3,776
Ellenville, N.Y.	Ellenville Wired TV Co.	2,000
Garnerville, N.Y.	Rockland Cablevision, Inc.	3,300
Highland, N.Y.	Colony Communications, Inc.	700
Monroe, N.Y.	Better TV, Inc., of Orange County	2,100
Newburgh, N.Y.	TelePrompTer of Newburgh	8,700
New Paltz, N.Y.	New Paltz Tele-Cable Corp.	1,268
New York City, N.Y.	CATV Enterprises, Inc.	1,000
	Comtel, Inc.	11,000
	Sterling Manhattan Cable TV	28,212
	TelePrompTer of Manhattan	39,500
Peekskill, N.Y.	Continental CATV	2,500
Port Jervis, N.Y.	Port Video Corp.	2,500
Poughkeepsie, N.Y.	Poughkeepsie Cablevision, Inc.	8,150
	Hudson Valley Cablevision, Inc.	2,700
Riverhead, N.Y.	Long Island Cablevision Corp.	4,069
Selden, N.Y.	Brookhaven Cable TV, Inc.	3,800
Walden, N.Y.	Walden Video Corp.	1,220
Wappingers Falls, N.Y.	Colony Communications, Inc.	2,000
Allamuchy, N.J.	Panther Valley Service, Inc.	158
Brick Township, N.J.	Crosswicks Industries	2,000
Burlington, N.J.	Cable TV of Burlington Co.	3,100
East Brunswick, N.J.	Middlesex Cablevision, Inc.	350
Hackettstown, N.J.	CATV Service Co.	1,850
Lambertville, N.J.	do.	650
Phillipsburg, N.J.	Warren Cable TV, Inc.	(1)
Pompton Lakes, N.J.	Tele-Mark Communications, Inc.	1,300
Ringwood, N.J.	Ringwood TV Cable Corp.	500
Sparta, N.J.	Garden State CATV, Inc.	4,280
Sussex, N.J.	Continental Transmission Corp.	320
Washington, N.J.	Washington Cable Co., Inc.	1,736
Bangor, Pa.	Clar-O-View Community TV	1,350
Bethlehem, Pa.	C-B-L Electronics	1,000
Buck Hill Falls, Pa.	Buck Hill Falls Co.	150
Easton, Pa.	Clear-Pic Cablevision	19,000
Matamoras, Pa.	Matamoras Video Cable Corp.	700
Milford, Pa.	Milford Community TV, Inc.	115
Nazareth, Pa.	D. J. Cable Co.	1,735
Perkasie, Pa.	Suburban Cable TV Co., Inc.	250
Sellersville, Pa.	do.	185
Portland, Pa.	Omega Cable Corp.	250
Stroudsburg, Pa.	Blue Ridge Bcstrs, Inc.	3,900
Total		181,589
NORFOLK, VA.		
Emporia, Va.	Peninsula Broadcasting Corp.	687
Hampton, Va.	Peninsula Cable Corp.	500
Newport News, Va.	Hampton Roads Cablevision Co.	600
Petersburg, Va.	Tri-Cities Cable TV, Inc.	3,300
Williamsburg, Va.	Peninsula Cable Corp.	100
Ahoskie, N.C.	Peninsula Broadcasting Corp.	350
Mufreesboro, N.C.	do.	250
Roanoke Rapids, N.C.	Roanoke Rapids TeleCable Corp.	3,350
Total		9,137

CABLE SYSTEMS WITHIN GRADE B CONTOURS OF TV STATIONS—Continued

City/State	Name of cable system	Number of subscribers
PHILADELPHIA, PA.		
Allentown, Pa.	Service Electric Cable TV, Inc.	38,275
Bangor, Pa.	Clar-O-View Community TV, Inc.	1,350
Bethlehem, Pa.	C-B-L Electronics, Inc.	1,000
Birdsboro, Pa.	Conestoga TV Cable Co.	1,100
Boyetown, Pa.	do.	1,000
Brockton, Pa.	Schuylkill Valley Trans-Video	950
Butler, Pa.	Armstrong Utilities Inc.	3,700
Columbia, Pa.	H. C. Ostertag Cable TV Co., Inc.	800
Downingtown, Pa.	Suburban Cable TV Co., Inc.	200
Easton, Pa.	Clear-Pic Cablevision	19,000
Emmaus, Pa.	Greater TV	2,200
Ephrata, Pa.	D & E Cable TV, Inc.	3,700
Hamburg, Pa.	Hamburg Community Cable	900
Hazleton, Pa.	Mountain City TV Co.	12,310
Graverville, Pa.	Graver Bros.	35
Ironton, Pa.	Parkland Cable TV, Inc.	1,700
Isabella, Pa.	Isabella Community Antenna System	(1)
Lancaster, Pa.	Cable TV Associates	8,000
Lansford, Pa.	Panther Valley TV Co., Inc.	4,000
Lebanon, Pa.	Lebanon Valley Cable TV Co., Inc.	4,907
Levittown, Pa.	Lower Bucks Cablevision, Inc.	6,000
Mahanoy City, Pa.	Service Electric Cable TV Inc.	19,300
	City TV Corp.	1,500
Marietta, Pa.	Cypress Cable TV Inc.	2,100
Nazareth, Pa.	D. J. Cable Co.	1,735
New Holland, Pa.	Enterprise TV Cable Co., Inc.	900
Northampton, Pa.	Twin County Trans Video Inc.	40,000
	D. J. Cable Co.	313
Palmerton, Pa.	Carbon Cable TV Inc.	8,900
Perkasie, Pa.	Suburban Cable TV Co., Inc.	250
Pine Grove, Pa.	Pine Grove TV Cable Service	475
Port Clinton, Pa.	Port Clinton TV Cable Association	70
Portland, Pa.	Omega Cable Corp.	250
Pottsville, Pa.	Pottsville Trans-Video	11,500
	Wire Tele-View Corp.	1,534
Reading, Pa.	Berks TV Cable Co.	15,620
	TV Service Co.	1,000
Reynolds, Pa.	Reynolds TV Cable System	100
Sellersville, Pa.	Suburban Cable TV Co., Inc.	185
Shillington, Pa.	Suburban TV Cable Co.	6,474
Shoemakersville, Pa.	Hamburg Community Cable	300
Springfield, Pa.	TeleSystems Corp.	(1)
Stroudsburg, Pa.	Blue Ridge Broadcasters Inc.	3,900
Tremont, Pa.	Wire Tele-View	680
Walnutport, Pa.	DMI Cable TV	985
Weathery, Pa.	Cable TV Inc.	615
Dover, Del.	Delaware Teleservice Co.	6,000
Wilmington, Del.	Cablevision of Delaware Inc.	7,500
Allamuchy, N.J.	Panther Valley Service Inc.	158
Atlantic City, N.J.	Atlantic Coast TV Cable Corp.	18,366
Beach Haven, N.J.	Island Cable Co.	2,600
Brick Township, N.J.	Crosswicks Industries	2,000
Bridgeton, N.J.	Garden State TV Cable Corp.	2,075
Burlington, N.J.	Cable TV of Burlington County	3,100
East Brunswick, N.J.	Middlesex Cablevision Inc.	350
Hackettstown, N.J.	CATV Service Co.	1,850
Hammonton, N.J.	Garden State TV Cable Corp.	400
Lambertville, N.J.	CATV Service Co.	650
Millville, N.J.	Holly City Cable TV	3,700
Ocean City, N.J.	South Jersey TV Cable Co.	4,049
Phillipsburg, N.J.	Warren Cable TV Inc.	(1)
Pleasantville, N.J.	Alpine Cable TV Inc.	8,000
Salem, N.J.	Tri County CATV	2,000
Sparta, N.J.	Garden State CATV Inc.	4,280
Stone Harbor, N.J.	National Cable TV Systems	(1)
Ventor, N.J.	South Jersey TV Cable Co.	8,400
Vineland, N.J.	Garden State TV Cable Corp.	4,380
Washington, N.J.	Washington Cable Co., Inc.	1,736
Aberdeen, Md.	Multiview Cable Co.	(1)
Bel Air, Md.	do.	(1)
Havre de Grace, Md.	do.	(1)
Total		307,707
PHOENIX, ARIZ.		
Ajo, Ariz.	Ajo TV Service Co., Inc.	1,550
Globe-Miami, Ariz.	Globe-Miami Cable TV Inc.	1,950
Prescott, Ariz.	TelePrompTer of Prescott	3,590
Total		7,090

CABLE SYSTEMS WITHIN GRADE B CONTOURS OF TV STATIONS—Continued

City/State	Name of cable system	Number of subscribers
PITTSBURGH, PA.		
Adams Township, Pa.	Adams-Croyle Cable TV	500
Aliquippa, Pa.	Centre Video	1,795
Ambridge, Pa.	Color Cable, Inc.	5,300
Baldwin Borough, Pa.	Tex-Video, Inc.	547
Beaver Falls, Pa.	Tower Cable Systems Corp.	4,000
Bedford, Pa.	Bedford Improved TV, Inc.	2,000
Brookville, Pa.	Multi-Channel Cablevision, Inc.	775
Brownsville, Pa.	Ross Bros.	850
Butler, Pa.	Armstrong Utilities, Inc.	3,700
California, Pa.	Sothwest Pennsylvania Cable TV	1,300
Canton, Pa.	Retel TV Cabel Co.	900
Carnegie, Pa.	Centre Video	2,700
Carrolltown, Pa.	Cambria TV Distribution Co.	3,300
Clairton, Pa.	Steel Valley Cablevision, Inc.	777
Clarion, Pa.	Centre Video	1,100
Connellsville, Pa.	Ross Bros.	100
	National Cable TV Corp.	1,950
Clymer, Pa.	Clymer Cable TV Co.	450
Crenshaw, Pa.	Telesonics Associates	(1)
Dawson, Pa.	Ross Bros Cable Co., Inc.	140
Donora, Pa.	Tex-Video, Inc.	1,524
Duquesne, Pa.	Steel Valley Cablevision of Duquesne	800
East McKeesport, Pa.	Western Penn Cablevision	1,000
Emlenton, Pa.	Telesonics Associates	220
Fairchance, Pa.	Fayette TV Cable Co., Inc.	500
Farrell, Pa.	Tex-Video, Inc.	650
Franklin, Pa.	Coaxial Cable Co.	4,150
Freeport, Pa.	Clearview Antenna TV Systems, Inc.	350
Garrett, Pa.	Kirchner TV Co., Inc.	103
Greensburg, Pa.	WHJB Cable Vision	(1)
Greenville, Pa.	Blatt Bros. TV Cable Corp.	1,650
Homestead, Pa.	Dynamic Cablevision, Inc.	2,200
Indiana, Pa.	Indiana Cable TV Co.	2,200
Indian Creek, Pa.	Laurel Highland TV Co.	290
Isabella, Pa.	Isabella Community Antenna System	(1)
Johnstown, Pa.	TelePrompTer of Johnstown	19,153
Kittanning, Pa.	Valley Master Cables, Inc.	2,800
Latrobe, Pa.	Highland Video, Inc.	2,200
Ligonier, Pa.	Laurel Highland TV Co.	312
McKeesport, Pa.	Tex-Video, Inc.	4,301
Meyersdale, Pa.	Kirchner TV Co., Inc.	443
Midland, Pa.	Steel Valley Cablevision of Midland	715
Monessen, Pa.	Tex-Video, Inc.	1,660
Nanty Glo, Pa.	Nanty Glo Cable TV	780
New Bethlehem, Pa.	Direct Channels Association of New Bethlehem	360
New Castle, Pa.	Lawrence Cablevision	4,300
New Kensington, Pa.	Westmoreland Cable Co.	9,100
Oakdale, Pa.	Angelo Valent Cable TV	200
Parker, Pa.	Telesonics Associates	(1)
Penn Hills Township	Centre Video Corp.	165
Pitcairn, Pa.	Pitcairn Community Antenna System	550
Pleasantville, Pa.	Telesonics Associates	(1)
Portage, Pa.	Portage Cable TV	400
Punxsutawney	Punxsutawney TV Cable Co.	2,500
Reynoldsville, Pa.	Jefferson TV Cable Co., Inc.	1,280
Scott Township, Pa.	Tex-Video, Inc.	241
Sharon, Pa.	Shenago Cable TV, Inc.	2,100
Somerset, Pa.	Laurel Cablevision Co.	1,100
Stowe Township	Tex-Video, Inc.	2,400
Swissvale, Pa.	Suffolk, Cable Co.	1,500
Turtle Creek, Pa.	Valley Cable TV Co.	3,200
Uniontown, Pa.	Fayette TV Cable Co.	7,062
Utica, Pa.	Reynolds TV Cable Service	1,086
Vandergrift, Pa.	GTE Communications, Inc.	1,881
Washington, Pa.	Washington Channels, Inc.	3,700
Waynesburg, Pa.	Kleer Kable	(1)
Wilmerding, Pa.	Steel Valley Cablevision of Wilmerding	675
Windber, Pa.	Windber Cable TV	800
Cameron, W. Va.	Haines TV Cable Service	1,050
Chester, W. Va.	C. & S. TV, Inc.	1,500
Farmington, W. Va.	Telepic, Inc.	384
Flemington, W. Va.	Bettervision Systems, Inc.	206
Follansbee, W. Va.	Interstate Cablevision, Inc.	905
Grafton, W. Va.	Westover TV Cable Co.	1,050
Keyser, W. Va.	Keyser TV Co., Inc.	3,000
Kingwood, W. Va.	Mountain State Cable, Inc.	600
Mannington, W. Va.	Bettervision Systems, Inc.	1,100
McMechen, W. Va.	Capital Radio & TV Co.	(1)
Morgantown, W. Va.	TelePrompTer of Morgantown	6,400
Moundsville, W. Va.	Mound City Cable	466
	Moundsville TV Cable Co.	1,836
Piedmont, W. Va.	Upper Potomac TV Co., Inc.	2,050
Pleasant View, W. Va.	Pleasant View TV Cable	30

CABLE SYSTEMS WITHIN GRADE B CONTOURS OF TV STATIONS—Continued

City/State	Name of cable system	Number of subscribers
PITTSBURGH, PA.—Continued		
Rowlesburg, W. Va.	Community Cable Co.	170
Shinnston, W. Va.	Bettervision Systems, Inc.	1,199
Warwood, W. Va.	Center TV, Inc.	650
Weirton, W. Va.	TV Cable Service, Inc.	4,010
Wellsburg, W. Va.	Wellsburg Cable Co.	1,000
Westover, W. Va.	Westover TV Cable Co.	895
Wheeling, W. Va.	Wheeling Antenna Co., Inc.	(1)
	Duvall Radio Sales & Service	(1)
Worthington, W. Va.	Worthington Community TV Association, Inc.	100
Cumberland, Md.	Potomac Valley TV Co., Inc.	19,144
Friendsville, Md.	Yough TV Co., Inc.	200
Frostburg, Md.	Frostburg Cable TV, Inc.	2,300
Lonaconing, Md.	Jackson TV Co., Inc.	1,310
Oakland, Md.	Bettervision Systems, Inc.	390
Amsterdam, Ohio	Merchants Broadcasting Systems	100
Bellaire, Ohio	Bellaire Tele Cable Co.	1,390
Bridgeport, Ohio	BANTCO	547
East Liverpool, Ohio	CATV Of Ohio Valley, Inc.	5,156
Lisbon, Ohio	Lisbon Cable TV Corp.	665
Martins Ferry, Ohio	Martins Ferry TV Cable Co.	2,700
Mingo Junction, Ohio	Interstate Cablevision Co.	1,190
New Philadelphia, Ohio	Tower Communications, Inc.	8,000
Salem, Ohio	Quaker CATV, Inc.	500
Salinesville, Ohio	Merchants Broadcasting Systems	250
Shadyside, Ohio	C. & R. Cable System	1,450
Steubenville, Ohio	Steubenville TV Cable Co.	5,000
Toronto, Ohio	TV Cable Service, Inc.	1,750
Uhrichsville, Ohio	Tower Communications, Inc.	2,700
Total		205,961
ST. LOUIS, MO.		
Centralia, Ill.	Sullivan Cablevision, Inc.	1,500
Mt. Vernon, Ill.	Sullivan Cable TV Co.	3,810
Salem, Ill.	Salem Cable TV Co., Inc.	1,325
Vandalia, Ill.	Vandalia Cable TV Co., Inc.	1,200
Ironton, Mo.	Community Cable Co.	(1)
Louisiana, Mo.	Louisiana Cable TV, Inc.	755
Total		8,590
SALT LAKE CITY, UTAH		
Logan, Utah	North Utah Community TV	345
Ogden Canyon, Utah	Community TV of Utah, Inc.	65
Price, Utah	Space Electronics, Inc.	210
Salt Lake City, Utah	Community TV of Utah, Inc.	70
Total		690
SAN DIEGO, CALIF.		
Aegean Hills, Calif.	Times-Mirror Corp.	660
Borrego Springs, Calif.	Tele-Cable Service Corp.	400
El Cajon, Calif.	Mission Cable TV	9,000
Escondido, Calif.	Escondido Cable TV	6,088
Fallbrook, Calif.	Pala Mesa Cablevision, Inc.	850
Hemet, Calif.	Riverside Cable Co.	500
Irvine, Calif.	Community Cablevision Co.	2,500
Laguna Beach, Calif.	Storer Cable TV, Inc.	5,759
Mission Viejo, Calif.	Mission Viejo Cablevision	713
Newport Beach, Calif.	Newport Beach Cablevision, Inc.	1,500
Oceanside, Calif.	TV Power of North County, Inc.	5,000
Perris, Calif.	Video Communications, Inc.	200
Poway, Calif.	Poway Cable TV	106
Rancho Bernardo, Calif.	Rancho Bernado Antenna System	2,800
Rancho De Los Penasquitos, Calif.	Penasquitos Antenna System, Inc.	100
San Clemente, Calif.	San Clemente Cable TV	3,791
Sand Diego, Calif.	Southwestern Cable Co.	6,000
Do	Mission Cable TV, Inc.	47,102
Do	Omni-Vision, Inc.	50
San Juan Capistrano, Calif.	Storer Cable TV, Inc.	681
Total		93,800
SAN FRANCISCO, CALIF.		
Albany, Calif.	Cable-com General of Northern California, Inc.	400
Belmont, Calif.	Belmont Cable TV Co.	3,000
Berkeley, Calif.	Bay Cablevision, Inc.	(1)

CABLE SYSTEMS WITHIN GRADE B CONTOURS OF TV STATIONS—Continued

City/State	Name of cable system	Number of subscribers
SAN FRANCISCO, CALIF.—Continued		
Brentwood, Calif.	Triangle Cable Co.	1,000
Carmel by the Sea, Calif.	Alarm Corp.	11,148
Carmel Valley, Calif.	Vic's TV Cable	691
Clearlake Highlands, Calif.	Konocti TV, Inc.	1,233
Clearlake Oaks, Calif.	Silver King Video, Inc.	700
Concord, Calif.	Concord TV Cable	18,375
Contra Costa County, Calif.	Bay Cablevision, Inc.	(1)
Corte Madera, Calif.	Tele-Vue Systems, Inc.	1,919
Crockett, Calif.	Crockett Cable System, Inc.	938
Daly City, Calif.	Vista Grande Cablevision, Inc.	500
Del Rey Oaks, Calif.	Ocean View Cablevision, Inc.	397
Dublin, Calif.	Tele-Vue Systems, Inc.	4,753
Fairfax, Calif.	Clear View Cable Systems, Inc.	5,900
Fremont, Calif.	Fremont Cable TV, Inc.	100
Gilroy, Calif.	Gilroy Cable TV, Inc.	650
Half Moon Bay, Calif.	Crystal Brite TV, Inc.	1,215
Healdsburg, Calif.	H-C-G Cablevision, Inc.	3,500
Lafayette, Calif.	Cablevision, Inc.	13,396
Livermore, Calif.	Tele-Vue Systems, Inc.	3,316
Lodi, Calif.	King Videocable	3,700
Los Gatos, Calif.	TelePrompter of Los Gatos	1,857
Marina, Calif.	Central California Communications	798
Martinez, Calif.	Televents of California, Inc.	14,500
Merced, Calif.	General Electric Cablevision Corp.	2,500
Milpitas, Calif.	Milpitas Cable TV	500
Novato, Calif.	CTE Communications	4,500
Oakdale, Calif.	Triangle Cable Co.	400
Pacifica, Calif.	Pacifica Cable Co., Inc.	6,500
Pacific Grove, Calif.	Ocean View Cablevision, Inc.	2,127
Petaluma, Calif.	Tele-Vue Systems, Inc.	6,500
Pinole, Calif.	Contra Costa Cable Co.	5,500
Pittsburg, Calif.	Tele-Vue Systems, Inc.	10,600
Pleasanton, Calif.	do	4,386
Richmond, Calif.	Bay Cablevision, Inc.	1,000
Rohnert Park, Calif.	Storer Cable TV, Inc.	1,000
St. Helena, Calif.	do	1,995
Salinas, Calif.	Central California Communications Corp.	9,027
San Francisco, Calif.	TV Signal Corp.	15,000
Total		165,521
TACOMA-SEATTLE, WASH.		
Anacortes, Wash.	TV Systems, Inc.	1,630
Arlington, Wash.	GTEC Cable TV	183
Auburn, Wash.	Green River Cablevision	800
Belleuve, Wash.	Vista TV Cable, Inc.	2,000
Big Lake, Wash.	Big Lake TV Cable	61
Bothell, Wash.	Vista TV Cable, Inc.	281
Bremerton, Wash.	Telecable of Bremerton, Inc.	2,200
Burlington, Wash.	Skagit TV Cable Co., Inc.	3,100
Centralia, Wash.	Twin City Cablevision, Inc.	5,169
Darrington, Wash.	Darrington TV Cable Co.	300
Edmonds, Wash.	GTEC Cable TV	(1)
Enumclaw, Wash.	Clearview TV Cable of Enumclaw, Inc.	2,500
Everett, Wash.	Everett Cablevision, Inc.	15,684
Gig Harbor Peninsula	Cable TV Puget Sound	114
Gold Bar, Wash.	Tele-Vue Systems, Inc.	377
Issaquah	Northwest Cablevision, Inc.	3,034
King County, Wash.	do	1,000
	Rune Coranson Co., Inc.	641
	Cable TV Puget Sound	1,842
Montesano, Wash.	King Videocable Co.	2,100
Morton	Mike's TV, Inc.	350
Normandy Park, Wash.	Northwest Cablevision, Inc.	(1)
North Bend	Cascade Radio & TV Cable	941
Olympia, Wash.	Telecable of Thurston County, Inc.	5,995
Pierce County, Wash.	(E) Cable TV Puget Sound	1,800
	(W) Cable TV Puget Sound	1,300
Port Angeles, Wash.	Port Angeles Telecable, Inc.	4,750
Renton, Wash.	Northwest Cablevision, Inc.	270
Shelton, Wash.	Taylor Radio Electric Service	300
Seattle, Wash.	United Community Antenna Systems	10,300
	Northwest Cablevision, Inc.	6,000
	Community Telecable of Seattle	1,000
	Crystal Cablevision, Inc.	1,650
Snohomish, Wash.	Tele-Vue Systems, Inc.	14
Total		77,686

1 Not available.

Seating capacity of National Hockey League arenas (1972-73)

Atlanta Flames	15,278	Montreal Canadiens	16,544
Boston Bruins	14,995	New York Islanders	14,665
Buffalo Sabres	15,534	New York Rangers	17,500
California Golden Seals	12,500	Philadelphia Flyers	16,600
Chicago Black Hawks	17,100	Pittsburgh Penguins	12,585
Detroit Red Wings	14,200	St. Louis Blues	18,006
Los Angeles Kings	16,005	Toronto Maple Leafs	16,316
Minnesota North Stars	15,064	Vancouver Canucks	15,569

Source: NHL.

TICKET SELLOUTS EACH NATIONAL HOCKEY LEAGUE ARENA FOR SEASONS 1969-72

	Year	Sellouts
Boston Bruins	1969-70	38 of 38.
	1970-71	39 of 39.
	1971-72	39 of 39.
Buffalo Sabres	1969-70	Not in league.
	1970-71	17 of 39.
	1971-72	33 of 39.
California Seals	1969-70	
	1970-71	5 of 39.
	1971-72	2 of 39.
Chicago Black Hawks	1969-70	35 of 38.
Detroit Red Wings	1970-71	20 of 39.
	1971-72	15 of 39.
	1969-70	None.
Los Angeles Kings	1970-71	1.
	1971-72	1.
	1969-70	29 of 43 (includes preseason)
Minnesota North Stars	1970-71	23 of 27 (includes preseason)
	1971-72	39 of 45 (includes preseason)
	1969-70	35 of 38.
New York Rangers	1970-71	38 of 39.
	1971-72	39 of 38.
	1969-70	19 of 38.
Philadelphia Flyers	1970-71	27 of 39.
	1971-72	26 of 39.
	1969-70	2 of 38.
Pittsburgh Penguins	1970-71	3 of 39.
	1971-72	5 of 39.
	1969-70	18 of 38.
St. Louis Blues	1970-71	21 of 39.
	1971-72	21 of 39.
	1969-70	18 of 38.

Source: National Hockey League.