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Big Ten, Time Warner Still Locked At Scrimmage Line

Parties Hold Firm To Their Carriage Positions During Sports Panel Discussion

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NEW YORK-- Like linemen locked in battle at the line of scrimmage, executives from Big Ten Network and Fox Sports Networks and Time Warner Cable and Cox Communications butted helmets over content and economic issues associated with carrying sports networks.

Depending on the vantage point, the executives, speaking here today at the Sports Media & Technology conference, hosted by Street & Smith's *SportsBusiness* Journal, either enunciated their long-held positions or rhetoric, often quite spiritedly, over distribution ramifications relative to sports networks in general and BTN in particular during a panel entitled: "The Programming and Distribution of Conference- and League-Owned Networks."

The backdrop: While BTN, which is co-owned by the conference's 11-member schools and Fox National Cable Sports Network, now counts more than 31 million subs via deals with DirecTV, Dish and telcos, plus 160 pacts with small cable and municipal providers, it remains on the sideline with Time Warner Cable, Comcast, Cox, Mediacom and Charter. Those operators have not budged on terms that call for the service to tackle expanded basic positioning for around a $1 per monthly subscriber fee in the conference-footprint states, and 10-cents for customers outside that territory. Time Warner and Comcast believe BTN should be positioned on a sports tier.

In broad strokes, the discussion from BTN president Mark Silverman and Fox Sports Network president Bob Thompson centered on the appeal of sports, the avidity of fans and strong ratings BTN has produced with football during its rookie season to date. For their part, Melinda Witmer, senior vice president and chief programming officer at Time Warner Cable and BobWilson, senior vice president of programming at Cox, repeatedly mentioned price/value equation and the needs to meet broad consumer interests via a palette of services.

The long and short of the discussion: bet the over about when the Big Ten Network will find its way onto Time Warner Cable or Cox systems.

Both sides did agree on one point: Nobody wants the government to get involved in price regulation and that market forces should be allowed to take hold.

Otherwise, the parties mostly agreed to disagree.

Thompson said BTN's "basket of rights," encompassing broadband, VOD and mobile and HD-presentations, make for a compelling product. He said that the 160 deals BTN has signed so far shows that distributors "like the product and see value in it," adding that placement on "lower, widely distributed tiers validates" the network.

Wilson said that for Cox, which only has about 60,000 subs within BTN's footprint, content is not the sole determinant for its offerings. He said that whereas satellite operators remain principally video providers, Cox

has to make its programming decisions based on competitive elements that factor in price/value relationships and customer service, particularly via its bundled offerings against telcos.

Wilson said that 40% of Cox's expanded basic video costs were tied to sports, which generated just 10% of the package's ratings. Witmer later said that when retransmission costs for broadcast network affiliates offering sports are factored into the cost equation that ratio could exceed 50%.

Witmer remarked that sports networks needed to be more flexible in terms of packaging. She said that if fans are so avid – as an example she cited people painting their winnebagos in school colors— they should be willing to pay more for sports and relieve the burden for other consumers. She also asked rhetorically if Time Warner Cable put BTN on expanded basic, what would come off in its stead: PBS, Discovery or Speed.

Silverman responded by saying that there are households without children that receive Disney Channel and homes without women that get Lifetime Television. Why should sports services be held to a different standard, he wondered.

Silverman also declared that in BTN's footprint, there aren't 60 channels more important to residents of those eight states. He said the network is producing strong ratings in its coverage areas, pointing to a pair of Ohio State football games that were among the top five shows in the Columbus, Ohio market in September and that an exhibition Buckeye basketball game last week set the Nielsen pace in the DMA.

In turn, Witmer talked about the notion of carriage positioning perhaps being reexamined based on networks' ratings or their capacity to maintain same. Later, she talked about what ratings BTN would generate past the September through March period when its 180 combined football (40) and basketball games expire.

"You want to compare with USA and FX come May, June and July," she said.

Silverman rejoined by noting the seasonality of other sports networks and questioned how many cable networks had "180 top events."

Witmer also expressed concern on more than one occasion about whether college conference networks would spawn, "the [Michigan] Wolverine Network" or the like.

Countered Silverman: "We are the Buckeye channel in Columbus, We are the Michigan channel in Ann Arbor [Mich.]. The rights are all with us."

Although there has been speculation about the SEC or ACC considering similar plays, Thompson said considerations relative to conference and market strength, geography and ultimately rights could all mitigate against a rush to more conference networks. To that end, he mentioned situations where rights have already been spoken for (Big East with ESPN); don't expire for six or seven years (ACC or Pac 10); or where individual schools control their own packages (University of Kentucky with basketball).

Talk also bounced around about vertical integration, with comments made about Comcast favorably locating its own networks like Golf Channel and Versus, and allusions to SportsNet New York, in which Time Warner, Comcast and the New York Mets all own stakes, gained a favorable channel position when it launched before the 2006 Major League Baseball season.

Thompson said there are no discussions of expanded basic or digital basis for BTN, "but a sports tier."

Wilson said that Cox positions regional sports networks anchored by professional teams, including its Cox Sports Television, which showcases games of the National Basketball Association's New Orleans Hornets on expanded basic. "Pro sports have broader appeal," he said.

Not surprisingly that remark drew Silverman's attention. "I don't follow that," he retorted.

The disagreements continued after the panelists exited the stage. Witmer was queried about whether Time Warner Cable was engaged in BTN conversations outside this type of open-air forum. "We talk to those guys all the time," she said. "They need to open up, there are lots of options." Discussions, she said, have included pay-per-view game proposals, like the operator offered to the NFL Network for its slate of eight primetime games.

For his part, Thompson was asked if BTN was at a stalemate with Comcast and Time Warner Cable. "It's hard to talk to them [Time Warner Cable]. We have occasion to talk to [Comcast] about a lot of things, and it [BTN] comes up."

Still, the post-session takeaway: the positions on both sides of the line aren't going to change anytime soon.

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510–6275

December 19, 2007

Mr. Roger Goodell
Commissioner
National Football League
280 Park Avenue
New York, NY 10017

Dear Commissioner Goodell:

We write today to express concern that the National Football League is exercising its substantial market power to the detriment of consumers. Specifically, we are concerned that the NFL member teams are using the NFL Network, to restrict the output of game programming. In an effort to obtain carriage of the NFL Network by all cable and satellite providers as part of their basic programming package, the NFL will air eight late-season games exclusively on the NFL Network. Forcing providers to carry the NFL Network as part of their basic programming packages would mean that all their customers, even ones not interested in the programming, would have to pay for it.

The NFL has reportedly sought to increase the pressure on satellite and cable providers by demanding that local broadcast network affiliates ensure that their distribution of these games is limited to narrowly defined local markets. This will mean that consumers in our home states will not have the choice of seeing these late season games. Residents of Vermont will not be able to see what may be an historic contest between the New England Patriots and the New York Giants. Likewise, residents of Allegheny, Armstrong, Beaver, Butler, Fayette, Forest, Greene, Indiana, Lawrence, Venango, Washington and Westmoreland counties in Pennsylvania will not be able to see the important match-up between the Pittsburgh Steelers and the St. Louis Rams.

This decision to limit the output of professional football game programming appears designed to sustain and strengthen the market power of the NFL and its member teams. In accordance with the decision of the Third Circuit Court of Appeals in *Shaw v. Dallas Cowboys*, 172 F.3d 299 (3d Cir. 1999), the sale of broadcast rights to satellite and cable providers is not covered by the NFL's antitrust immunity. As you know, we have previously expressed concern about the NFL member teams restricting the output of game programming. Almost exactly a year ago, we held a hearing focused on the NFL Network as well as the efforts of the NFL to restrict output through its exclusive sale of the Sunday Ticket. At that hearing, Stanford University Professor Roger Noll, one of the Nation's foremost experts in sports economics and regulatory policy, characterized the NFL Network as "a profit-enhancing reduction in output in the sense that the game that is on

NFL Network, the eight games, will be available to fewer people than had those games been offered on broadcast television."

The NFL appears to be moving incrementally closer to limiting distribution of its programming to subscription television. Businesses are generally free to set their own prices and to decide with whom to deal, but unlike most other businesses, the NFL and its member teams have long been beneficiaries of exemptions from some aspects of federal antitrust law relating to broadcast rights to their games. These exemptions may have made sense at one time, when leagues were far less commercialized and were committed to making their television rights available for free, over-the-air broadcast. Now that the NFL is adopting strategies to limit distribution of game programming to their own networks, Congress may need to reexamine the need and desirability of their continued exemption from the Nation's antitrust laws.

We ask that you take prompt action to make games like the Patriots-Giants and Steelers-Rams games more broadly available than just on the NFL Channel. We also ask you to provide us with a justification for the decision by the NFL and its member teams to restrict distribution of game programming in light of the fact that such conduct is not immune from the antitrust laws.

Sincerely,

Arlen Specter

Patrick Leahy

My name is Jim Delany and I assumed the Big Ten Commissionership in 1989. The Big Ten Conference is a not-for-profit educational organization with a staff of 30 people. We perform a variety of functions for our member schools including, but not limited to training and assigning game officials, compliance rules education, marketing and press relations, holding championships and conference competitions, and developing television, bowl and other competitive and media agreements. The conference was founded in 1895, is the oldest intercollegiate conference in the country, University of Wisconsin was one of the 7 charter members.

I appreciate the opportunity to discuss the conference, the Big Ten Network and related issues. The Big Ten Network is a for-profit company and a joint venture between the Big Ten Conference, its members and Fox Sports. I would like to place the Big Ten Network, Conference revenue sharing, our media agreements including agreements with ABC, CBS, ESPN, our bowl agreements and the joint academic/competitive enterprise known as the Big Ten Conference into some perspective. We have aggregated our television rights, as well as our bowl rights including a commitment to share revenue equally from these sources since 1989. I have had the privilege of serving a variety of Chief Executive Officers of the University of Wisconsin, including Donna Shalala, David Ward and John Wiley. During my tenure and their tenure, Wisconsin athletic programs went from the red to the black financially, from the cellar to the Rose Bowl in football and on a broad array of sports, from not competitive to nationally competitive.

Many people were responsible in planning and executing this fabulous turnaround. Executives, administrators, coaches and student athletes can all share in this success story. Fans responded and reacted positively to this success. However, the conference structure is based on a one for all - all for one collaborative TV, bowl, and revenue sharing approach that formed a foundation for this turnaround. Examples include the following:

1. Football television went from 18 telecasts in 1989 to 80 telecasts in 2007.
2. Basketball went from 1 national telecast on ESPN in 1989 to at least 3 per week in 2007.
3. CBS national telecasts went from 10 to 20 per year.
4. Men's and women's basketball tournaments were created.
5. The growth of Big Ten bowls grew from single Rose Bowl to a total of 7 bowl relationships including 3 New Year's Day games, and bowls in Texas and Arizona.
6. Big Ten through the BCS has experienced 3 championship opportunities as well as 7 at large BCS playing opportunities in the last 10 years.
7. Attendance in football grew from 58,000 to over 71,000 during this time average.

8. Men's basketball attendance continues to lead the nation through this period.
9. Conference distributable revenue grew from $20 million in 1989 to over $200 million in 2007.
10. Nine different teams played in the Rose Bowl during this time period including 3 Wisconsin appearances.
11. Seven different teams played in NCAA Final Four competition including Wisconsin.
12. National championships were crowned in 20 different sports.
13. Opportunities grew from 6,500 student athletes to 8,500 student athletes.
14. The allocation of opportunities moves from 70/30 male/female to 51/49 male/female during this period.
15. Scholarship aid grew from $30 million annually to over $100 million annually.
16. The Big Ten Network was created.
17. Significant agreements with ABC/CBS, ESPN were achieved.

In conclusion, I couldn't be prouder of what the University of Wisconsin inter-collegiate athletics has accomplished. I am proud of the executives, the administrators, the coaches, the players and the fans. Tremendous progress has been made in Madison over the last 20 years. However, I will go on the record to say that these accomplishments have not occurred in a vacuum – but rather in

the context of a competitive and collaborative joint enterprise known as the Big Ten Conference where institutional TV rights are aggregated and marketed with institutional limitations, where institutional bowl rights are aggregated and forged with institutional limitations, where gate and TV revenue is shared by those with the most successful programs with those with less successful programs and where national and conference competitiveness is sought within these shared practices within the nations oldest collegiate conference. It is obvious that these practices produce a great deal of upward mobility and competitive strength throughout the conference. Wisconsin has prospered in this structure. Eleven institutions building and pulling in one direction often allied against the strongest and most powerful media interests in the world.

The Big Ten Network is an extension of these values and standards. It is a bold and aggressive attempt to build a vibrant national network serving the interest of our universities and fans in a challenging and sometimes less than competitive marketplace. Our members are served well by this aggregate structure as we negotiate with networks, bowls, cable systems and new media opportunities.

The Big Ten Network is similar to other bold initiatives undertaken by the conference during its history, it is similar to the Big Ten entering into the Rose Bowl relationship in 1947, it is similar in its boldness to the Penn State expansion, it is similar to the innovation that the conference displayed when it established college football's instant replay and the vision of the network is

similar to the vision the conference exhibited when it committed to equity of participation for its male and female athletes. All of these initiatives reflect on a combination of tradition and innovation, the conference has always believed that change requires a touch of courage, some patience and a unified and shared commitment.

Fortunately, we have 11 institutions who believe in these values.

Testimony of Mark Silverman,
President, Big Ten Network
Wisconsin Senate Committee on Commerce, Utilities & Rails
December 20, 2007

I would like to thank this committee for the opportunity to address the issues before us today. The Big Ten Network's goal is to provide more Big Ten programming than ever before to the fans, students, and alumni of the 11 universities comprising the Big Ten. The network has been built to represent the tradition, culture and values of the Big Ten and the University of Wisconsin. In addition to its numerous football and basketball games, the network will televise more than 150 women's events, hundreds of hours of non-sports related university programming, and previously non-televised sports such as wrestling, soccer, and field hockey. In our first year alone, we will air approximately 400 live events. The network will not accept any alcohol or gambling advertising, will not run infomercials, and has committed to gender equity in men's and women's sporting events within three years.

In September, the network became the first cable network ever to be distributed in 30 million homes within its first 30 days of being on the air. The network now has deals with more than 160 cable operators in the Midwest, all carrying the network on an expanded basic level of service. In addition, the network has negotiated deals with the two largest satellite providers DirecTV and Dish Network, and with AT&T U-verse. Within the Big Ten community and the eight states that comprise the Big Ten, the network is seeking expanded basic carriage. We believe that the integration of these universities into the fabric of their respective states and communities warrants broad distribution to all homes in the region. Outside the eight states, we are open to a different level of service.

We are pleased that those with access to the network report they enjoy the increased coverage for their schools, as well as the quality of the productions. The majority of our events are produced in high-definition, with experienced announcers, analysts and producers ensuring a high-quality broadcast.

At this time, the network is not being carried by the four biggest cable providers in the eight-state region: Comcast, Time Warner, Charter, and Mediacom. We are having continued negotiations with some of these cable companies, and are actively working to try and reach mutual agreements with them.

The network has learned that in markets with viable competition, we have been more successful in negotiating deals. In our situation, competition acts in the best interest of both the consumer and the Big Ten Network. Providing consumers more options, including multiple ways to receive the network through a variety of distributors who provide content and services they desire, is a step forward for Wisconsin.

We are not requesting that the Wisconsin legislature mandate binding arbitration between cable companies and the Big Ten Network. We believe a free market in which competition flourishes to be the proper environment in which to negotiate an agreement.

Now, I'd be happy to answer any questions you may have.

Thank you.

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WCCA

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EXECUTIVE DIRECTOR - Thomas Moore

Testimony of the Wisconsin Cable Communications Association
Before the Senate Committee on Commerce, Utilities and Rail
December 20, 2007

Thank you Chairman Plale and Committee members for the opportunity to appear today in opposition to Senate Bill 343. My name is Tom Moore and I am the Executive Director of the Wisconsin Cable Communications Association. Our members include Time Warner Cable, Charter Communications, Comcast Cable, MediaCom as well as some 25 smaller regional and local cable providers in Wisconsin.

It seems to me there is really a discussion today going on at two levels – there is the issue regarding the NFL and BIG TEN Networks and whether or not they are currently carried by certain cable providers, and then there is Wisconsin Senate Bill 343 which is before the committee today. I would like to address both issues, and I would like to start by focusing on the policy proposed in Senate Bill 343.

Quite simply, we believe the bill fundamentally flawed on and should not be approved by this committee.

- The bill's provisions are clearly preempted by federal law and the Constitution of the United States.
- The bill is patently one-sided and unfair.
- The bill is bad public policy which would certainly lead to higher cable prices in Wisconsin.

First, let me turn to Howard Symons who will speak to the jurisdictional and Constitutional issues raised by the bill.

HOWARD'S TESTIMONY

We do not believe this is even a close call as to whether or not the Wisconsin government has authority to legislate in this area. Leaving aside the obvious jurisdictional problems with this bill, I want to address many other concerns which should be raised.

A ONE-SIDED BILL – MANDATORY CARRIAGE

Proponents of this bill have maintained that they are not attempting to choose a side in the dispute between some cable operators and the NFL Network, but are rather are establishing an independent third party to help resolve the dispute.

Unfortunately, this "legislative fix" does not facilitate a mutually agreeable dispute resolution process. On the contrary, it creates a right of carriage on cable systems by almost any programmer at a price dictated by an arbitrator. Ironically, it actually creates the problem it purports to solve – that is an unfair, unreasonable and discriminatory process with many harmful consequences to Wisconsin video customers.

SB 343 grants rights *only to video programmers*. Under the bill, an unaffiliated programmer could seek arbitration if *it believes* that a multichannel video programming distributor has not treated it in a fair, reasonable and nondiscriminatory manner concerning the amount proposed to by paid by the video distributor. The bill does not allow a cable operator to initiate an arbitration process at all.

The bill also does not permit the arbitrator to judge the reasonableness of the programmer's belief that it has been treated unfair. A programmer simply needs to self-assert it has been harmed - no need to present any evidence of harm.

The bill does not permit the cable operator to decline to carry the programmer if they cannot agree on the price, terms and conditions of carriage. And the bill does not permit the arbitrator to even consider the other terms of the negotiations such as where the channel will be carried or the length of the contract – though all of these will have a direct impact on the price of the service.

In fact, under this bill, the arbitrator's only role is to initiate a process, at the request of a programmer, which will result in the programmer's channel being carried on a cable operators system at a price determined by the arbitrator.

The provisions of the bill are like this: I knock on your door and announce that I am here to negotiate the sale of your home to me. I let you know the price I will pay and if you do not agree, I can take the issue to an arbitrator who will dictate a price of the sale of your home. You may argue that you do not want to sell your home to me but that would be irrelevant to the arbitration. I would have the right to commence a proceeding through which I could obtain your home at a price dictated by an arbitrator.

This bill is not about arbitration - it is about mandatory carriage of programming.

MANDATORY CARRIAGE IS BAD PUBLIC POLICY

We believe that mandatory carriage of programming content as dictated by this bill is really bad public policy. First of all, let's remember that we are talking about business negotiations which are taking part between two private parties, in the private sector in a business which is now highly competitive. And these negotiations between cable providers and programmers are not new, but in fact are a very normal part of our business. We do not believe it is the appropriate role of state government to intervene and in fact create a new law which grants special privileges to one party to the negotiations. This is an issue which should be resolved by market forces and not government intervention.

The view I am expressing is shared by an overwhelming majority of Wisconsin citizens as reported in two recent polls. You may have seen the poll paid for by WisPolitics which asked the question of likely voters on November 29 - the day of the Green Bay v. Dallas game -71% of the respondents said the state government should not get involved compared to only 24% who thought they should.

We found slightly more dramatic results when we paid a nationally recognized polling firm to ask the question of people who pay for video – both cable and satellite customers – and 85% of the people polled did not think the Wisconsin government should get involved in the issue.

I have included summaries from both polls in my handouts.

It is also important to note that while the discussion has been about the NFL or Big Ten Networks, the "arbitration" rights created for programmers under this bill extend to virtually all available cable programming. Senate Bill 343 creates a right of arbitration for a any unaffiliated video programmer that offers a video channel that competes in the same "programming category" as a channel owned by a multichannel video programming distributor. The programming categories are so broad – sports, news and public affairs, music videos, consumer purchasing, religious, pay-per-view and any other entertainment - that any unaffiliated programmer could claim "comparability" to an affiliated programmer.

Thus under this bill virtually *any* programmer could seek arbitration which, as I already explained, leads to mandatory carriage at a price dictated by the arbitrator. Now there are hundreds of programming networks available and they would all like to be in cable's channel line-up and in fact all seek first to be placed on the expanded basic tire because it is the most widely purchased tier.

For example, the latest FCC Assessment of the Status of Competition in the Market for the Delivery of Video Programming that released March 3, 2006 and reports that in 2005, the FCC identified 531 satellite-delivered national programming networks, which is an increase of 143 over the 2004 total of 388 networks. Most any of these could seek to gain placement on the expanded basic tier by following the same arbitration process that the NFL Network would use.

These include many shopping channels, "adult" entertainment channels, and many foreign channels such as Al Jazeera, the Dubai Satellite Channel, Beijing TV and Channel One Russia.

The industry has been moving over the past few years to create packages of like programming - grouped into tiers which can be purchased separately by customers depending on their interests. Examples are HD tiers, family tiers, faith & value tiers, movie tiers and sports tiers. The result is that we can offer our customers greater choice and flexibility while not making every customer pay an increased cost for programming they don't value as much.

I understand this bill is intended to allow the NFL or Big Ten Networks a way to force their way on to the expanded basic tier, but the way it is drafted it would also grant the same arbitration rights to virtually any network. The bill's result would be to move the industry in the opposite direction of choice and flexibility. Instead of increasing choices for our customers, the result of this bill would be to force cable operators to have one very large tier in place of small packages of like programming being offered today.

And the obvious result would be higher prices for cable customers. This Committee, lead by Senator Plale has worked so hard this Session to pass the Video Competition Act which is designed to increase choices for consumers and put downward pressure on video costs. This bill would have the opposite effect on both choice and costs. Any programmer that uses this state-mandated arbitration process would be adding costs to cable's channel line-up and there is no process under this bill to control the costs. The arbitrator has one job - which is to determine the price of the channel which will be placed wherever the programmer requests. One thing we know for sure about this bill – it will result in higher cable prices for Wisconsin video customers.

Maybe that's why the USA Today characterized the NFL Network's plan as a "pick-pocketing" scheme.

Maybe that is why the Green Bay Press-Gazette warned that "state legislators should think twice about entering this fray unless they want to force cable rates higher".

Maybe that is today's Wisconsin State Journal call this bill "unnecessary if not silly".

NFL, BIG TEN NETWORKS

Finally, I want to turn and address issues specifically related to the NFL and Big Ten Networks because obviously, these are the entities pushing for mandatory carriage with this bill.

Cable providers are in the video delivery business. Companies like Time Warner Cable and Charter Communications want to carry programming that any segment of our customers want to see. Clearly, cable providers understand the value of sports programming to a large segment of our customers and that's why cable line-ups carry thousands of hours of professional and armature sports each year.

At the same time, cable operators need to be mindful of the costs and placement of programming in the line-up. The amount cable operators pay for programming is by far the single largest operating expense, and sports programming is leading the pack in terms of cost. Cable operators are trying hard to contain the soaring costs of sports programming so that it doesn't price basic cable TV service out of reach of our customers. The creation of a separate sports tier is one tool cable companies have used to contain the cost of programming. Sports tiers allow avid sports fans the ability to see the games they want without making every other cable customer pay higher cable rates for something they may not value as much.

Now, along comes the NFL and Big Ten Networks - new to the market as the number three and four most expensive cable networks being offered – and demanding they are placed on the most widely purchased tier. Now it is clear from the public comments made by companies like Time Warner Cable, Charter Communications and Comcast Cable that those companies want these networks available on their systems but they want to sell them on a sports tier for all the reasons I have just explained.

But those networks are refusing to budge on placement. Instead of working out terms with cable providers which would allow for carriage on sports tiers, they have come running to the Capitol to pull Legislators into their fight.

The NFL Network officials and lobbyist are telling anyone who would listen that they are in fact on the side of their fans. They want to be on the most widely viewed cable tier so that more of their fans can watch the games.

But let's look at the facts: The NFL games were available to anyone in Wisconsin with a TV set and a set of rabbit ears until last year. But with the new 2006 television contract negotiations, NFL fans began to lose access to games. The NFL decided to hold back eight second half season games for itself so that it could sell the games to fans who formerly could view the games for free over broadcast TV. Think about it – if the league was really concerned about fan accessibility to games, why did it hold back these eight games and put them on a costly cable network, why did it allow Monday Night Football to move to ESPN? Why does the NFL not allow cable companies and their customer's access to the "NFL Sunday Ticket" package? Why does it allow CBS and FOX to alternate their "doubleheader" Sunday games to ensure higher ratings for the telecast? The answer is obvious – it is about money. It is about the league leveraging the popularity of professional football to increase revenue. I am not arguing the league doesn't have the right to maximize revenue. But please don't give them a pass when they come here before you and tell you they are standing up for the fans.

They own the rights to the games. They dictate the terms of coverage. They could fix this immediately by returning NFL games to broadcast TV. Why not a bill requiring the league to carry the games on broadcast TV?

The fact is the NFL overestimated the demand for their new network. NFL Commissioner Roger Goodell projected that the NFL Network would have over 50 million, and possibly 60 million subscribers by this time, but it is falling well short of those numbers. They carry eight NFL games a year and 357 days of re-runs and repeats and there is no guarantee your favorite team will play in one of those games. So now they have the audacity to run to government to solve the business dilemma of their very expensive and poorly rated network.

And while I am at it, I cannot figure out for the life of me why people in the Green Bay Packer TV market should be forced to pay for the NFL Network as part of the expanded basic cable package. We all know the frustration expressed in Wisconsin was from the thousands of loyal Packer fans who were out of market and not able to see the Packer/Dallas game this year. But the game on November 29th was on broadcast and cable TV on the entire eastern half of Wisconsin from the Illinois boarder up to Marinette. Do you want to demand that cable customers in that market have to pay for the 4th most expensive cable channel all year so that they can have the Packer game – if there are more Packer games on the network – on two channels simultaneously? That makes no sense at all. Yes there are seven other match-ups on the Network this year. But many people are not interested in paying the entire year for a whole network with only eight NFL games a year. Of course, many NFL fans would like the other programming available on the NFL Network and that is why many cable companies are fighting hard to have the network available on a sports tier.

RECOMMENDATIONS FOR THE COMMITTEE

First, do not encourage their actions by pursuing this one-sided legislation. If the Network prevails in obtaining legislation to force mandatory coverage this could only be the start of more and more NFL games moving to pay TV. The same is true for the Big Ten Network. Surely the other major and even minor sports conference will attempt to follow the lead of the BTN. How many conference sports networks should Wisconsin cable customers have to support?

Second, do not take away cable's bargaining power. Whether it is the NFL, Big Ten or any of the hundreds of programming networks who could avail themselves of the arbitration rights created under this bill, the cable providers must have the means available to them to negotiate the best deals for our companies and our customers. The position many of our companies have taken to request carriage on a sports tier happens to fall precisely in line with the views of the vast majority of people who purchase video either from a cable or satellite provider. We know this because a) we take a lot of effort to know our customers and b) we have done the polling in Wisconsin. The fact is, according to our polling which I have provided to the Committee, 75% of Wisconsin's cable or satellite customers believe the NFL should allow their local provider to carry the games on a sports tier.

Finally, help cable companies in our efforts to provide choice and flexibility for our customers while keeping the price of expanded basic cable affordable to Wisconsin consumers.

I am convinced that the intentions of the authors of SB 343 are good. We understand and sympathize with many sports fans across Wisconsin who want to watch the Badgers and Packers on TV. We are sports fans too and we want to have the games available on our channel line-up.

I urge you to not undercut our ability to continue to negotiate with cable programmers such as the NFL and Big Ten Networks as we seek terms of agreement which will balance the interests of all of our subscribers. Please let the market do what it does best and permit the parties to work towards a mutually agreeable solution to this issue.

Thank you again for the opportunity to testify on this issue. I would be happy to answer any questions by Committee members.

Wisconsin State Journal

THURSDAY
DECEMBER 20, 2007

OPINION

OUR OPINION

'FAN' bill is out of bounds

It was a bummer last month when the big Packers-Cowboys football game could not be seen on conventional or cable television in much of Wisconsin.

You had to sign up for satellite TV or walk down to a sports bar to catch the action on the NFL Network.

Now the same thing is happening with University of Wisconsin Badger basketball games. Some games will appear exclusively on the Big Ten Network, which major cable television providers Charter Communications and Time-Warner fail to carry because of stalled negotiations with the sports network.

It's frustrating and inconvenient. But it's not the end of the world. And it certainly isn't cause for rushed and showy legislation down at the state Capitol.

About two dozen Wisconsin politicians are pandering to sports fans by proposing a law they claim will end the sports "blackout" on some Packers and Badgers games.

The Senate Committee on Commerce, Utilities and Rail will hold a public hearing today on Senate Bill 343. The hearing is scheduled for 11 a.m. in room 411 South at the Capitol in Madison.

The bill aimed at getting more Packers and Badgers games on cable television would set a bad precedent for government meddling in the free market.

Chief sponsors Sen. Dave Hansen, D-Green Bay, and Rep. Kitty Rhoades, R-Hudson, have dubbed their proposal the Fair Access to Network (FAN) Act. Sen. Fred Risser, D-Madison, is a co-sponsor.

This unnecessary if not silly legislation would create an independent body to determine if certain television channels should be carried by cable providers.

The bill would set a bad precedent for government meddling in the free market. If two companies can't negotiate a private deal that makes financial sense for both of them, so be it. The government shouldn't be in the business of forcing private companies into a deal in which they can't control key terms of the contract.

It's also possible the bill is unenforceable or even unconstitutional.

Instead of dabbling in this private business dispute, state lawmakers should butt out. They should spend their time instead trying to encourage more market competition which leads to greater customer choice.

And in a big way, they've already done that. The Legislature recently approved the video competition bill. This bipartisan legislation will make it easier for providers to enter and expand in the marketplace. Customers will enjoy more choice and better prices than they would get without competition.

Those benefits will take some time to play out. But greater competition should shake loose a deal to make prime-time Packers and Badgers sports programming more accessible to average fans.

Go ahead fans, call your cable company or the Packers or UW-Madison to complain about the game blackouts when they occur.

But as for state lawmakers, your misguided attempt to force a fix on unwilling companies is out of bounds.

WNA
Green Bay Press-Gazette: November 20, 2007 -Page 7a
Green Bay, WI

OUR VIEW

ISSUE:
Cable TV wars

Elected officials should sit this out

One more observation as local and state elected officials try to insert themselves into the dispute between the NFL and Big Ten networks and the state's two largest cable television providers:

The dispute is whether the networks are included in the systems' "basic" packages at a monthly price of about $2 per subscriber between the two networks, or whether the cable companies can put those channels into a premium package, where the subscribers have the option of paying the extra freight for the service.

The way the networks demand it, the companies would be forced to raise rates on every basic subscriber; the way the cable companies want it, subscribers would have a choice whether to pay the increase. Forcing it onto the basic package means a lot more money for the National Football League and Big Ten, of course, which is why they want it.

Village boards and state legislators should think twice about entering the fray, unless they want to force cable rates higher. Voters remember that sort of thing.

If government leaves it alone, the market will work it out eventually. Depending upon how it turns out, it may mean less popularity for the Big Ten or the NFL or for the cable companies. Are those issues where the government really needs to get involved?

WNA
The Chippewa Herald, Chippewa Falls: November 6, 2007 -Page 6a
Chippewa Falls, WI

OUR VIEW

Politicians should stay out of business dispute

The University of Wisconsin's first big football game of the entire season, last Saturday's Big Ten Conference matchup with No. 1-rated Ohio State, wasn't available on television to a large segment of Badger fans.

Compared to a number of other issues that come before the Wisconsin Legislature each year, finding a way for Badgers fans to watch their team could be considered — to mix sports analogies — a home run. But when it comes to forcing two businesses to settle a financial dispute, the politicians should forget about even going up to bat.

There is something cruel about being able to watch the Badgers play losing teams most weeks and then not be able to see them finally play one of only two Top 25 opponents.

The Big Ten formed a television network this year, ostensibly to create another profit source. Oh, they'll say they're in it to better serve the fans, and provide a wider forum for less-popular sports. But let's face it, the TV network is mostly about finding another way to make money.

As with many other upstart networks, they ran into trouble when it came to getting the network on cable television systems.

Charter Communications and Time Warner, the state's two largest cable providers, want to put the network on a special sports tier that costs subscribers an extra fee. They say they're trying to keep cable bills down, but let's face it: a channel carrying Big Ten games probably has a lot more appeal in Wisconsin than a few dozen other channels customers are being forced to pay for.

Besides, both satellite TV systems found a way to put the Big Ten Network on its programming lineup.

There is something cruel about being able to watch the Badgers play teams with losing records most weeks and then not be able to see them finally play one of the league's two Top 25 teams. And while we sympathize with those fans who were left out in the cold Saturday, the Legislature has no business, so to speak, getting mixed up in a conflict between two businesses.

The state shouldn't legislate the cable companies must cave in to the Big Ten's demands, any more than it should force the league to fold and accept the cable provider's terms.

When enough cable customers drop their service for satellite TV, or when the Big Ten realizes it really needs to reach those cable customers, then the two parties will sit down and work out a deal. But what we have now is an old-fashioned standoff, and it's not the first time, either.

In fact, a Packers-Vikings game on the NFL Network last season produced the same angst.

It's regrettable that we fans are pawns in all of this, but the solu-

Blitzing the FCC

WSJ 11/19/07

Everyone knows the National Football League is full of tough guys, but that doesn't mean team owners are above whining to federal regulators when they don't get their way off the field.

The NFL Network calls a political play.

The league is currently upset that its eponymous television channel, the NFL Network, isn't getting wide distribution on basic cable. Instead, Time Warner and Comcast want to offer the network as part of their less popular sports tier of programming. The first NFL Network game of the season is on Thanksgiving, and the cable firms show no signs of giving in to the league's demands. The industry maintains that the NFL is charging cable companies too much money for them to offer the network on their basic tier without increasing subscription rates.

Dallas Cowboys owner Jerry Jones, whose team plays twice this season on the channel, has taken to calling for pigskin fans to drop cable operators and switch to satellite television, which runs a special package of NFL games each week. Perhaps the very prosperous league would do better to negotiate more favorable carriage terms with Time Warner and Comcast, though we suppose Mr. Jones has every right to engage in a PR war if he thinks it'll help his bargaining position.

More troubling is the NFL's attempt to involve government regulators in what is essentially a commercial dispute. The league has taken its complaints to the Federal Communications Commission in hopes that the agency will force the hand of cable operators. A media campaign against cable is one thing, but seeking regulatory leverage in a private-sector dispute is unsportsman-like conduct. We trust the FCC knows the difference and will respond accordingly.

WNA The Janesville Gazette: November 6, 2007 -Page 8a
Janesville, WI

OUR VIEWS

Fans should keep blitz on cable TV

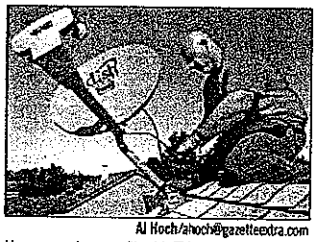
Badger and Packer fans are up in arms, and it isn't because they're doing the traditional "wave." Instead, they're letting their wallets do the talking and waving goodbye to cable TV.

Complaining about cable TV is a Badger State spectator sport. If ever-increasing costs don't grate on subscribers, service problems do.

Now, fans who are missing key Badger and Packer games on Wisconsin's cable TV heavyweights, Charter and Time Warner, are pouring into satellite TV offices.

Let's face it. Televised games have spoiled us. Our favorite football games, as well as Badger men's basketball games, sell out. Fans who don't have tickets have been able to catch the action in their living rooms. A decade or two ago, few Badger games were televised. In recent years, most have been.

The new Big Ten Network is changing



Al Hoch/ahoch@gazettextra.com
How many viewers will cable TV companies lose to satellite TV before getting the message from fans?

the television landscape. Last Saturday's football game between Wisconsin and No. 1-ranked Ohio State was available only on the Big Ten Network. This season, only that network will carry 20 Badger men's basketball games.

Couple that with the Nov. 29 contest between the Packers and Dallas Cowboys being available only on the NFL Network, and, well, lawmakers think it's time to get in the game.

Last week, lawmakers fresh off their, ahem, swift approval of a state budget started moving quickly to enact bipartisan legislation. They want arbitration to help settle disputes between sports networks and cable companies.

Such legislation seems reasonable. But this isn't a matter of public health or safety. This tussle is all about money, and we would prefer to let it play out through market forces.

The Big Ten Network wants cable companies to carry its games on expanded basic packages without adding to customer charges. Charter and Time Warner argue that the price, about $1.10 per customer, would make the Big Ten Network one of the most expensive basic channels and that adding it would force nonfans to help pay for a station they aren't interested in.

But many customers of basic packages pay for channels they seldom or never watch. And if small cable TV companies such as those in Westby and Richland Center can add the Big Ten Network, why can't Charter and Time Warner?

They can. And if enough residents place satellite dishes on their homes or blitz Charter and Time Warner with complaints, the companies will get the message. To its credit, the Big Ten Network's $1.10 per customer fee is negotiable, President Mark Silverman told sports writer Tom Miller in Friday's Gazette.

So keep talking, and get it done.

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THE TARRANCE GROUP
www.tarrance.com

MEMORANDUM

TO: WISCONSIN CABLE COMMUNICATIONS ASSOCIATION

FROM: BRIAN TRINGALI
KATIE HANDEL

DATE: DECEMBER 14, 2007

RE: KEY FINDINGS FROM SURVEY OF WISCONSIN TV CONSUMERS ABOUT THE DISPUTE BETWEEN CABLE PROVIDERS AND THE NFL

The Tarrance Group completed a survey of adults in Wisconsin to assess views held by the public and test messages about the dispute between cable providers and The National Football League (NFL) over the placement of the NFL Network in cable lineup options. A telephone survey of N=600 adults was conducted with respondents 18 years or older, involved in television entertainment decisions for the household and subscribed to pay-TV services. A random sample of this type is likely to yield a margin of error of ± 4.1%. Responses to this survey were gathered December 9 – 11, 2007.

This survey found that a majority of all Wisconsin adults with pay-TV services are aware of the dispute between cable providers and the NFL. When provided with the information that this dispute resulted in missing a Green Bay Packers football game this season and two (2) college bowl games, adults are divided in their level of concern. Further highlighting how the dispute is perceived by the public, when provided with background information and the basic argument of each side, a majority of adults (50%) side with cable providers and 44% indicate their view is closer to the NFL's argument. Even with high awareness and a division of public opinion, there is a willingness among Wisconsin adults to allow market powers to determine the outcome of this dispute.

These findings are based primarily on the specific results below:

- Adults in Wisconsin, with pay-TV service, are satisfied with their current provider. Forty-two percent (42%) indicated they are very satisfied, forty-five percent (45%) are somewhat satisfied, and only 12% are not too or not at all satisfied. Of adults with pay-TV service, 68% subscribe to cable and 32% subscribe to satellite.

- Sixty-five percent (65%) of Wisconsin adults with pay-TV services are aware of the recent dispute between the NFL and cable providers over adding the NFL Network to expanded basic cable line-ups and 35% remain unaware. Awareness of the dispute is higher among cable customers (69%) than satellite customers (57%).

- Wisconsin adults are split in their level of concern about the impact of the on-going dispute. Adults outside the Green Bay Packers home market (those affected by a lack of Packers coverage) were asked to gauge the level of concern if their cable provider did not carry the NFL Network which resulted in missing a Green Bay Packers football game this season and two (2) college bowl games. Of adults outside the Packers home market, 29% are extremely concerned, 27% very concerned, 13% somewhat concerned and 31% are not at all concerned. Satellite customers are more likely to be concerned with 35% who are extremely concerned compared to cable customers at 25% extremely concerned. Those likely to be not all concerned include women (36%), seniors (38%), and those who watch one (1) professional football game a week (39%).

- Respondents were provided with the following background explanation:

> "The National Football League sells the right to televise NFL football games to major networks. In 2003, the NFL Network was created and currently holds the right to broadcast eight regular season games. With the exception of the media market where the two participating teams call home, for example Green Bay, these games will not be televised on any other major network. As you may or may not know, the NFL and cable providers disagree over whether the NFL Network should be offered as part of an expanded basic cable subscription or as part of an optional sports package."

Respondents were then read two opposing viewpoints about the dispute and asked to indicate who they would side with based on hearing these positions (viewpoints were rotated and read):

> "Cable providers want to include the NFL Network in a digital sports package – charging only customers who subscribe to additional sports coverage. This way, cable TV customers who do not want the NFL Network do not have to pay for it, and cable TV customers who do want the NFL Network can buy the optional sports package."
>
> (OR)
>
> "The NFL wants cable providers to include the NFL Network in the expanded basic cable package and share this additional cost among all customers."

A simple majority (50%) of Wisconsin adults indicate that after hearing the background explanation and opposing viewpoints of the dispute they would side with the cable providers. With a 6-point gap, forty-four percent (44%) of adults indicate they would side with the NFL. Opinions over the dispute are held strongly, indicating a solidification of positions. Thirty-eight percent (38%) of adults agree strongly with the cable providers and 32% agree strongly with the NFL's position. Those more likely to side with cable providers are adults outside of the Packers home market (54%), men (54%), working men (57%), single (58%) and those who watch one (1) professional football game a week (57%).

- The following selected messages highlight a willingness among respondents to allow cable providers and the NFL to settle the dispute through the usual process of market negotiations. There is strong intensity behind allowing customer and company interests to settle the dispute shown by the overwhelming agreement (85%) that the government should stay out of it and 72% feeling strongly so. Further, three-fourths of adults (75%) agree that precedent has already been set on resolving this dispute.

Informative Statements	Agree	Unsure	Disagree
The NFL has already allowed the largest cable company in the country to carry the games on an optional sports tier. It should do the same for your cable provider.	75%	8%	18%
The NFL wants the government and bureaucrats to get involved and make cable providers comply with their demands. The government should stay out of the dispute and let consumers and the companies figure it out.	85%	3%	12%

- Further, there is almost universal agreement that only customers who want additional sports coverage should have to pay the additional and high costs demanded by the NFL.

Informative Statements	Agree	Unsure	Disagree
If cable providers give in to the NFL, even customers who already have access to all Green Bay Packers games, will have to pay for the cost of the NFL Network on expanded basic cable and that is not fair.	77%	4%	19%
If the NFL Network is carried as part of the expanded basic cable package, all customers will pay the extra cost. Only customers who want additional sports coverage should have to pay.	71%	4%	26%
The NFL is demanding tens of millions a year for just 8 regular season games. This is too much money to expect cable customers to pay for this programming.	84%	4%	12%

WisPolitics/Checkpoint Poll: State should stay out of cable dispute
12/11/2007

Despite much of the state missing the Green Bay Packers' showdown with the Dallas Cowboys on the NFL Network and the prospect of not seeing 20 Wisconsin men's basketball games scheduled for the Big Ten Network this season, likely voters don't have much desire for state lawmakers to get involved in the channels' dispute with cable providers, according to a new WisPolitics/Checkpoint survey.

Seventy-one percent of respondents said they don't want the state to get involved in the disputes, while 24 percent said it should. The remaining 5 percent had no opinion or no answer.

The telephone survey of 400 likely voters statewide was conducted Nov. 29-Dec. 4. It has a margin of error of plus or minus 5 percentage points. The poll was conducted as awareness of the issue was high: the Packers-Cowboys game took place Nov. 29 and could only be seen by satellite TV subscribers on the NFL Network and on local television in Green Bay and Milwaukee, which the NFL considers to be the Packers' home market.

The respondents were asked: This year some Wisconsin residents have been unable to watch certain Green Bay Packers and University of Wisconsin football and basketball games due to a dispute between the Big 10 Network and NFL Network and large cable companies like Time Warner and Charter Communications. Two state legislators have proposed a law to provide a third-party arbitrator to settle disputes between cable companies and independent programmers. Do you think the state should get involved in the dispute or should the cable companies and the network work out the situation on their own?

The results:

The state should get involved, 24 percent Cable companies and networks should work out situation on own, 71 percent No answer/no opinion, 5 percent

*See the polling memo: http://www.wispolitics.com/index.iml?Article=112444

-- WisPolitics.com/Checkpoint poll results are a subscriber-only product of WisPolitics.com. For information on subscribing to WisPolitics.com products, contact: Jim Greer at greer@wispolitics.com and 608-237-6296.

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

December 19, 2007

Mr. Roger Goodell
Commissioner
National Football League
280 Park Avenue
New York, NY 10017

Dear Commissioner Goodell:

We write today to express concern that the National Football League is exercising its substantial market power to the detriment of consumers. Specifically, we are concerned that the NFL member teams are using the NFL Network, to restrict the output of game programming. In an effort to obtain carriage of the NFL Network by all cable and satellite providers as part of their basic programming package, the NFL will air eight late-season games exclusively on the NFL Network. Forcing providers to carry the NFL Network as part of their basic programming packages would mean that all their customers, even ones not interested in the programming, would have to pay for it.

The NFL has reportedly sought to increase the pressure on satellite and cable providers by demanding that local broadcast network affiliates ensure that their distribution of these games is limited to narrowly defined local markets. This will mean that consumers in our home states will not have the choice of seeing these late season games. Residents of Vermont will not be able to see what may be an historic contest between the New England Patriots and the New York Giants. Likewise, residents of Allegheny, Armstrong, Beaver, Butler, Fayette, Forest, Greene, Indiana, Lawrence, Venango, Washington and Westmoreland counties in Pennsylvania will not be able to see the important match-up between the Pittsburgh Steelers and the St. Louis Rams.

This decision to limit the output of professional football game programming appears designed to sustain and strengthen the market power of the NFL and its member teams. In accordance with the decision of the Third Circuit Court of Appeals in *Shaw v. Dallas Cowboys*, 172 F.3d 299 (3d Cir. 1999), the sale of broadcast rights to satellite and cable providers is not covered by the NFL's antitrust immunity. As you know, we have previously expressed concern about the NFL member teams restricting the output of game programming. Almost exactly a year ago, we held a hearing focused on the NFL Network as well as the efforts of the NFL to restrict output through its exclusive sale of the Sunday Ticket. At that hearing, Stanford University Professor Roger Noll, one of the Nation's foremost experts in sports economics and regulatory policy, characterized the NFL Network as "a profit-enhancing reduction in output in the sense that the game that is on

NFL Network, the eight games, will be available to fewer people than had those games been offered on broadcast television."

The NFL appears to be moving incrementally closer to limiting distribution of its programming to subscription television. Businesses are generally free to set their own prices and to decide with whom to deal, but unlike most other businesses, the NFL and its member teams have long been beneficiaries of exemptions from some aspects of federal antitrust law relating to broadcast rights to their games. These exemptions may have made sense at one time, when leagues were far less commercialized and were committed to making their television rights available for free, over-the-air broadcast. Now that the NFL is adopting strategies to limit distribution of game programming to their own networks, Congress may need to reexamine the need and desirability of their continued exemption from the Nation's antitrust laws.

We ask that you take prompt action to make games like the Patriots-Giants and Steelers-Rams games more broadly available than just on the NFL Channel. We also ask you to provide us with a justification for the decision by the NFL and its member teams to restrict distribution of game programming in light of the fact that such conduct is not immune from the antitrust laws.

Sincerely,

Arlen Specter

Patrick Leahy

REPRESENTING WISCONSIN BUSINESS

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Wisconsin Manufacturers' Association • 1911
Wisconsin Council of Safety • 1923
Wisconsin State Chamber of Commerce • 1929

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To: Chairperson Jeff Plale
Members of the Senate Committee on Commerce, Utilities and Rail
From: R.J. Pirlot, Director of Legislative Relations
Date: December 20, 2007
Subject: **Oppose Senate Bill 343.**

Wisconsin Manufacturers and Commerce (WMC) is the largest representative of Wisconsin employers. Our membership is a broad cross-section of the state's economic activity and our members employ approximately one-quarter of the state's private-sector workforce.

Senate Bill (SB) 343 would create binding arbitration rights to settle disputes between video programmers and multichannel video programming distributors. Under the bill, a video programmer which believes that a multichannel video programming distributor has not treated the programmer in a "fair, reasonable, and nondiscriminatory manner" regarding how much the distributor will pay the programmer for programming may force the distributor into binding arbitration. In such a dispute, the arbitrator would have the power to choose how much the distributor would pay for the addition or renewal of the programming in question.

Sports Fans Are Understandably Upset

As a result of a still-unsettled dispute between cable television providers, such as Time Warner and Charter Communications, and the NFL network, some Wisconsin football fans have not been able to watch, on their cable televisions, all of the games they would like to see. For example, Green Bay Packers fans in parts of Wisconsin were understandably upset that their cable television provider did not afford them an opportunity to view the recent game between the Packers and the Dallas Cowboys.

Unfortunately, fan frustration has lead some state legislators to believe that the appropriate way to settle this dispute is by state action. As frustrated as sports fans are that this dispute is ongoing, no legitimate state interest is advanced by advancing a legislative remedy for, ultimately, what is a private commercial disagreement.

Sports Fans Have Alternatives

Sports fans, as the NFL Network's "Football 24.7" website points out, have alternatives. In Wisconsin, today, many disgruntled cable television customers can drop their cable subscriptions and, instead, obtain their programming via satellite. The Football 24.7 website contains helpful links to DIRECTV and the Dish Network, satellite television providers which offer the NFL Network.

More Alternatives Forthcoming

In addition to the satellite television providers noted, above, more video services competition is on the way. The Legislature just concluded its work on Assembly

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Bill (AB) 207, legislation which will foster more competition in the video services market by allowing companies, such as telecommunications company AT&T, to enter into statewide franchise agreements for the provision of video services. This is good news for Wisconsin consumers, and WMC commends the Legislature for passing AB 207 and we have respectfully requested Governor Doyle sign AB 207 into law.

State Has No Business Meddling in a Private Commercial Dispute

Fundamentally, and the root of WMC's opposition to SB 343, is that the state should not meddle in what is a private commercial dispute. Resolution of this dispute should be left up to the NFL Network and the cable companies. It is up to these companies to negotiate how this programming will be offered and how customers will be charged. WMC sincerely hopes the parties come to an agreement but, as pointed out earlier, alternatives to cable television programming exist and more are forthcoming should the issue *not* be resolved.

Legislation like SB 343 would set a disturbing precedent for government interference in private commercial disputes and negotiations. If SB 343 makes sense, what other private commercial disputes should be settled by binding arbitration, should one party request it? What kind of beer is sold in Miller Park? Which kinds of hotdogs are sold here in Madison at Mallards games? Should Usinger's or Johnsonville brats be sold at Lambeau Field? How Target and WalMart decide to stock their shelves? Where is the endpoint to this rationale?

WMC respectfully urges you to oppose Senate Bill 343.

MMAC

Metropolitan Milwaukee
Association of Commerce

DATE: **DECEMBER 19, 2007**

TO: **SENATE COMMITTEE ON COMMERCE, UTILITIES AND RAIL**

FROM: **STEVE BAAS, GOVERNMENT AFFAIRS DIRECTOR**

RE: **SB 343**

On behalf of the Metropolitan Milwaukee Association of Commerce (MMAC) I urge your opposition to SB343, subjecting disputes between cable companies and those who provide programming to government-mandated arbitration.

The MMAC represents over 2000 member businesses employing over 300,000 workers throughout the metropolitan Milwaukee area. As such, we are wary of any legislation that empowers government interference in free market transactions of goods and services, and support such intervention only in cases of the most critical public necessity. SB343 empowers government intrusion into contract negotiations between private companies concerning sports and entertainment programming. We strongly believe such an intrusion is gross overexertion of government authority.

While we understand the frustration of Wisconsin sports fans over the pace of negotiations between major cable companies and the NFL and Big Ten Networks, this frustration does not justify government intervention into these negotiations. Television programming, its cost to consumers, and the manner in which it is provided by a cable company, just like the products and services provided by any other business, should be determined by that business and the market – not by government. The government has as little business telling cable companies how and whether they must carry the NFL Network as it would telling the NFL that it must offer its Sunday Ticket programming in the US over basic cable systems rather than exclusively through Dish Network.

Thank you again for your attention to our concerns on this matter. We hope you will join us in opposing this bill and its inappropriate government meddling into this free market negotiation.

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