

THE SPORTS ANTIBLACKOUT LAW OF 1973:  
A CASE STUDY OF GOVERNMENT INTERVENTION  
INTO PROFESSIONAL SPORTS BROADCASTING PRACTICES

by

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A MASTER'S THESIS

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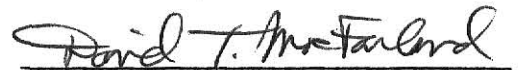
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This work is dedicated to my father, F. Irvin Nelson, and to the memory of my father-in-law, E. Dale Honey.

## INTRODUCTION

To date, there has been only one major piece of scholarly literature written concerning the history of sports on television. It was a 1974 doctoral dissertation written by Donald E. Parente titled, "A History of Television and Sports."<sup>1</sup> Parente's dissertation was an examination of an interesting interdependence between television and sports. As sports became dependent upon the money generated by television rights contracts, television, in turn, became dependent upon sports to provide important programming. It seems odd that sports, which garners millions of dollars each year from broadcasters and networks, has been the subject of little, if any, mass communication research. The numbers can be staggering. For the 1980 football season, radio and television broadcasters and networks paid over \$207,000,000 for the rights to broadcast professional and college football in the United States.<sup>2</sup> It is this money that allows sports teams to pay their star players million-dollar contracts.

This thesis seeks to bring together in a single volume, the information available concerning the history of Public Law 93-107,<sup>3</sup> better known as the sports antiblackout law. P.L. 93-107 prohibited the blacking out, on television, of professional events in four major sports (football, baseball, basketball, and hockey) in the home territory of the home team when the event was sold out 72 hours prior to its starting time. Generally, the "home territory" of a team consisted of the area 75 miles around the team's home city.

The sports antiblackout law was passed in September, 1973, and expired December 31, 1975. It created section 331 of the Communications Act, and directed the Federal Communications Commission (FCC) to "conduct a continuing study of the effect" of the antiblackout section of the Act, and submit a yearly report to the Senate and House Commerce Committees.<sup>4</sup>

In essence, what Congress did with P.L. 93-107, was to put the major professional sports leagues under the jurisdiction of the FCC, at least as far as the leagues' television contracts with the national networks were concerned. It seems unlikely that the FCC would become involved in the administration of professional sports, but through congressional mandate such a relationship did come about.

This is an archival study, and the information contained herein comes from documents and articles already available. This study intends to be a useful compilation, into a logical order, of the activities surrounding the passage of the law. Chapter I will be a brief look at the history of the interaction between sports and television, and the beginning of the antiblackout movement in the late 1960s and early 1970s. Chapters II and III will cover the years 1972 and 1973, respectively. In 1972, antiblackout measures were seriously considered by Congress. In 1973, the antiblackout law was considered and passed. Chapter IV will take a brief look at the effects of the antiblackout law upon the professional sports leagues, and at further attempts to pass antiblackout legislation. Chapter Five will examine the significance of Public Law 93-107.

## NOTES

<sup>1</sup>Donald E. Parente, A History of Television and Sports, Doctoral Dissertation, University of Illinois at Urbana - Champaign, 1974.

<sup>2</sup>"Short yardage on football prices," Broadcasting, August 4, 1980, p. 56.

<sup>3</sup>47 U.S.C. Sec. 331 (Repealed, effective December 31, 1975).

<sup>4</sup>Ibid.

CHAPTER I  
THE BACKGROUND OF  
SPORTS ANTIBLACKOUT LEGISLATION

The Relationship Between Sports and Television

The inter-relationships between sports and television are important. The phenomenal amount of money the professional sports leagues make from the sale of rights to broadcast league games has already been mentioned. One could also consider the effect of television upon sports. For example, it has been widely contended that television made professional football the popular sport that it is today, by giving it exposure to the public. On the other hand, it is also widely contended that television killed interest in the sport of boxing, because of overexposure.

A third relationship--the subject of this paper--is the triangle formed by television, sports, and the government. To sports purists, it might seem absurd that sports could become so involved with the government. Sports are for pure enjoyment. Sports are a microcosm of the world: a team working together toward a common goal--to win. Sports build character. They teach us to win gracefully and to lose with pride. That is the view from one side of the fence.

On the other side, there are those who believe that the rise of some sports to the level of major business enterprises has scarcely been a surprise. It was to be expected that such a regulated condition would occur when sports became inextricably (although quite voluntarily) entwined with broadcasting, particularly television. Television has spent millions of dollars on professional team sports. These millions of dollars have

come in the form of rights payments, purchasing the right to broadcast the games in a particular sport.

Donald Parente suggests that television and sports have developed a symbiosis:

It has been suggested that once a sport, league, or team has had its product bought by television for use as programming, that entity can seldom exist thereafter, at least in the same style or manner, without the financial support of television. Similarly, television has become dependent upon sports to fulfill many of its programming needs. The result has been an intimate relationship between two essentially dissimilar entities.<sup>1</sup>

Parente even states that sports have changed the game to suit television and the television sports fan. It is true that longstanding traditions have been changed, both to increase the value of the TV rights for the sports leagues, and to increase the ratings (and, as a result, the value of commercial time in television sports broadcasts). Among the changes that sports have made to suit television are the cutting of halftime intermissions from 20 to 15 minutes by the NFL, in order to shorten the length of the games. Early television broadcasts of golf were necessarily limited to coverage of only a few holes, because of the lack of, and the bulkiness of television equipment. Because of that, professional golf changed their tournament formats from the traditional match play to a stroke basis. The head-to-head competition may have been exciting, but the matches were often decided long before the last few holes.<sup>2</sup> The World Series used to be a daytime event, even when the majority of Major League fields were equipped with lights. That changed in the early 1970s. The first evening telecast of a World Series game was on October 13, 1971. It was a response to the success of the All-Star Game on television at night, as well as the ratings success of ABC's "Monday Night Football."<sup>3</sup> After that first evening telecast, World Series games played during the

week have been played and telecast in the evening, while weekend games have been played in the afternoon.

### The Beginning of Televised Sports

Television began as an experiment, much as radio was an experiment. TV had its experimental start in the 1920s and 1930s, but had not really caught on before World War II delayed further development. RCA introduced televised sports at the 1939 New York Fair:<sup>4</sup>

The first such event, as a regularly scheduled program, was a baseball game, the college contest between Columbia and Princeton, on May 17, 1939. A single camera was so set up along the third-base line that it gave a general view of the action. This telecast revealed that one camera was not enough. By the time another important baseball game went into the television records, a professional double header between the National Leaguers, Cincinnati and Brooklyn, in Brooklyn, a second camera had been added with resulting better relay of the game.<sup>5</sup>

The authors of the above description glossed over the fact that:

Artistically, the telecast was a flop. None of the players could be identified, nor could the teams be differentiated from each other. The ball was virtually nonexistent and the . . . camera. . . had an extremely difficult time following the ball and the players.<sup>6</sup>

But perfection is rarely an attribute of early experimentation.

Wrestling and boxing were the best sports for early television, because the action was limited to a small, well-lighted area. Thus, these sports became weekly features on pre-World War II television.<sup>7</sup> Other sports were also broadcast on an irregular schedule before the war, among them football, tennis, hockey, basketball, track, and a bicycle race.<sup>8</sup>

### An Important Court Decision

When the war ended, television began to grow. From around 5,000 sets in existence in 1946, the number of television receivers ballooned to 7,000,000 by 1950.<sup>9</sup> There was an increasing number of television broadcasts of professional football games each year, until 1950. That year, the Los Angeles Rams had a disastrous year at the gate. Rams attendance in

1950 dropped an average of 15,825 persons per game from 1949. The drop was blamed almost entirely on television. The following year, when the games were not televised, attendance rose by more than 100 percent.<sup>10</sup> Other teams around the league reacted by dropping some of their television coverage.

The National Football League officially reacted in 1953 by banning all telecasts of any NFL game into the area 75 miles around any other NFL city. There were exceptions for teams located within 100 miles of each other (e.g.--Baltimore and Washington). This blackout was in effect whether the home team was playing at home or away. The home NFL team could broadcast their home games within their home territory, but the Los Angeles disaster kept most from doing that. Radio broadcasts of competing games into a team's home territory were also banned. NFL Commissioner Bert Bell was also given the right, under the NFL by-laws, to veto any broadcast, either radio or television.<sup>11</sup>

These changes in the league's by-laws led the Justice Department to file suit against the National Football League for violating the Sherman Antitrust Act.<sup>12</sup> They argued that the league was restraining interstate commerce by enforcing the by-laws.

U.S. District Court Judge Allan K. Grim (Eastern District, Pennsylvania) struck down several provisions of the by-laws, including Bell's veto right over football broadcasts, the ban on telecasts of competing games into the home team's territory when the home team was playing away from home, and the ban on radio broadcasts of other games whether the home team was playing at home or away. But Grim ruled that the blacking out of outside games into the home territory of a team playing at home was a "reasonable" and "legal" restraint of trade.<sup>13</sup>

In his decision, Grim described professional football as " . . . a unique type of business . . . it has problems which no other business has."<sup>14</sup> Competitors in business would, at times, put each other out of business, but:

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 . . . . 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 keep the league in fairly even balance.<sup>15</sup>

Grim agreed with the theory that fans of weaker teams would stay home to watch stronger teams play on television, further weakening the financial support of the weaker teams. Grim felt that even the stronger teams would suffer, because their fans would not want to see a game between a very good team and a very bad team.

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.<sup>16</sup>

Grim felt that part of the solution for the NFL was some restriction on broadcasting. And he found the only reasonable restriction was a blackout of outside games in the home territory of a team playing at home. This was a restraint of trade, but was not illegal, according to Grim.

This particular restriction promotes competition more that it restrains it in that its immediate effect is to protect the weak teams and its ultimate effect is to preserve the league itself.<sup>17</sup>

NFL officials were "jubilant" over Judge Grim's decision to uphold "what they considered the most important factor" in their by-laws regarding broadcasting.<sup>18</sup>

#### An Antitrust-Law Exemption

Prior to 1961, each professional team negotiated directly with the broadcast station or network that would carry its games. As a result,

there would be many different contracts covering the broadcasting of professional sports. It was much as it is now with the coverage of Major League Baseball. Each team contracts with a local radio and TV station to provide coverage. Most broadcast all of their games on radio and televise at least some of the road games back to the home city.

Through 1961, professional football was arranged in a similar way. Each team negotiated with the networks for national and local telecasts:

Thus in 1960 and 1961, for example, the ABC network telecast AFL (American Football League) games, NBC telecast Baltimore and Pittsburgh of the NFL, and CBS telecast the remaining NFL teams other than the Cleveland Browns, who were telecast by Sports Network.<sup>19</sup>

In late 1960, the NFL began the chain of events that led to the enactment by Congress, in 1961, of an exemption for the professional sports leagues from the nation's antitrust laws. The NFL and CBS entered into an agreement that gave the network the rights to all NFL games. The league had "pooled" the television rights for all member clubs, and sold the entire package to CBS for the 1961 season. Then, just to be sure, the NFL petitioned Judge Grim, asking if their 1961 contract violated his 1953 decision. Grim's verdict: it did, because in his final judgement in 1953, Grim prohibited league members from entering into an agreement with another team or the league". . . having the purpose or effect of restricting the areas within which broadcasts or telecasts of games . . . may be made."<sup>20</sup> Under the new agreement, CBS had the right to determine what games would be broadcast and where they would be broadcast. Therefore, in July of 1961, Grim struck down the NFL-CBS pact as a violation of his earlier judgement.<sup>21</sup>

The CBS-NFL contract was not the only one of its kind in existence at that time. The fledgling American Football League (AFL) had a similar "package" contract with ABC. The National Basketball Association had the same kind of deal with NBC, which had been in effect since 1954.<sup>22</sup> The NFL wanted

equity with these other leagues concerning network television contracts.

Only temporarily set back, the NFL went to the Congress. There, they found a supporter in Representative Emanuel Celler (D-N.Y.). By the end of September, 1961, a bill authorizing rights-pooling by the leagues of professional football, baseball, basketball, and hockey had been passed by Congress. This was Public Law 87-331, which was an exemption, for professional sports, from the nation's antitrust laws.<sup>23</sup> The legislation allowing the pooled contracts passed through the House on a Monday; the Senate passed it the following Thursday. Celler cited the bill as ". . . necessary to assure weaker NFL teams of adequate television income." He feared that the television networks would buy rights only to the more successful teams.<sup>24</sup>

There was a blackout provision included in the bill, to allow blackouts of games when a team was playing at home. The main focus of this section was against the broadcast of outside games, and it was added to make the bill conform with Judge Grim's 1953 decision. There was some concern that the language of the Celler bill would give back to the NFL broad blackout rights, in effect legislatively reversing Grim's decision.<sup>25</sup>

Also added onto the bill was a section prohibiting the telecasting of professional football games after six P.M. Friday or on any Saturday during the college football season. This part was added after urging by the National Collegiate Athletic Association (NCAA).<sup>26</sup> It was intended to protect the college football games, traditionally played on Saturday afternoons, from the competition of televised professional football.<sup>27</sup>

The NFL voluntarily ended, in 1966, the blackout allowed by Grim in 1953. This was the blackout of any outside games into the home territory of a team playing at home. A commonly accepted reason for that blackout lift was television competition from the AFL. The AFL had been broadcasting

its games into NFL cities from its inception in 1960. The NFL did not want the AFL to capture the whole television market in those cities when NFL teams were playing at home. Also in 1966, the NFL and AFL agreed to merge into one league, the merger to take effect in 1970. The merger stopped the television competition between the leagues, and also stopped the fierce bidding wars that the leagues had had over rookie football players. Beginning in 1967, the NFL and AFL drafted college players jointly. The only blackout that remained was the blackout of a team's own home games.

#### Post-1961 Rights Payments Increases

The amount of money paid by broadcasters and networks to sports teams rose throughout the 1960s, and continues to rise even today. A big jump in the rights payments to three major sports leagues occurred shortly after the passage of the 1961 legislation. In 1963, the NFL's total revenue from sale of broadcast rights was around \$5,360,000. In 1964, TV and radio paid \$14,848,000 for the rights to NFL games.<sup>28</sup> The American Football League experienced a jump in TV revenue in 1965. From \$2,787,000 in 1964, rights increased to \$7,470,000.<sup>29</sup> In actuality, both the NFL and AFL increases came in 1964. In '64, NBC outbid ABC (which had carried the AFL games since the league's inception in 1960) for the rights to AFL games, starting in 1965.<sup>30</sup> In 1961, NBC had lost to CBS the broadcast rights for Baltimore and Pittsburgh of the NFL. The only chance for NBC to get professional football on its network was to bid for the AFL rights contract.

It is speculated that the pooled rights arrangements were beginning to pay off for the leagues; more revenue was generated because of the all-or nothing aspects of such an arrangement. In addition, it was during the period 1962-1966 that the NFL and the AFL were involved in bidding wars

over rookie ball players, and both leagues needed the extra money from the broadcasters to pay inflated player salaries.

Major League Baseball also experienced a jump in revenues from rights payments in 1965. The contract price for national rights went from \$1,700,000 in 1964, to \$5,950,000 in 1965.<sup>31</sup> At the time, the increase was attributed to the pooled rights situation.<sup>32</sup>

It is popularly contended that a relationship can be drawn between the 1961 antitrust exemption and the financial success of sports during the 1960s. This financial success was to come back and haunt the leagues, particularly the National Football League. That success was cited as one reason for the correctness of antiblackout legislation.

#### KGLO: The FCC and Television Blackouts

The FCC became involved with a blackout controversy in 1970. The Minnesota Vikings and the Green Bay Packers played a very important NFL game in Minneapolis, Minnesota, November 22, 1970. KGLO-TV is located in Mason City, Iowa, but its signal reaches into the Minneapolis area, so normally, the game would not have been available to KGLO. But the game was also of great interest to the area around Mason City, and, for some reason, the station had been heavily promoting the fact that the game was going to be telecast. CBS then told KGLO that they would not receive the game. The station objected, and eventually, CBS and KGLO reached a compromise. If KGLO operated at 80% of authorized power on November 22, cutting down the distance that the signal would travel, then CBS would allow KGLO to carry the game. The station did this without FCC permission, and word got to the Commission from viewers complaining about KGLO's signal quality. Operation at 80% of authorized power is permitted only when technical problems make such operation absolutely necessary. The FCC's reaction was to send letters

to both KGLO-TV and CBS, advising them that the television station had violated an FCC rule, and that CBS was partly to blame. The letter also stated that there would be no further action, because KGLO-TV had promised not to pull a similar trick again.<sup>33</sup>

FCC Commissioner Nicholas Johnson issued a dissenting opinion that blasted the Commission for not penalizing KGLO with even a small forfeiture (fine) " . . . 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."<sup>34</sup> Johnson was concerned that "Big Sports" and "Big Broadcasting" had "overstepped" their 1961 antitrust exemption as far as blackouts were concerned. He suggested that similar rule violations might be taking place of which the Commission did not know, and went on to write:

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.<sup>35</sup>

#### Antiblackout Sentiments Grow

In December of 1969, Representative L. Mendel Rivers (D-S.C.) introduced an antiblackout bill into the House.<sup>36</sup> The bill, which would have allowed blackouts only if the game was not sold out three days before the game day, died in the House Judiciary Committee that session.<sup>37</sup>

In March of 1970, Management Television Systems, Inc. (MTS), headed by former FCC chairman E. William Henry, filed an antitrust suit against the National Football League and the three major television networks. The suit charged that the league and ABC, CBS, and NBC had "'combined and conspired' to monopolize TV coverage of pro games in violation of the antitrust laws."<sup>38</sup> The suit arose out of MTS' plan to arrange a closed circuit telecast of the January 1970 Super Bowl in New Orleans, the city in which the game was

played. MTS was refused the opportunity to carry the game because it was blacked out in New Orleans. MTS contended in their suit that the blackout rule for professional sports did not include the blackout of closed circuit telecasts. In fact, MTS felt that they had the right to pick up events without permission, but thought that it was "appropriate" to negotiate for rights.<sup>39</sup>

Nothing came of this suit as far as a decision is concerned, but the NFL did allow MTS and other closed circuit companies to bid on coverage of the January, 1972 Super Bowl game in New Orleans. NFL Commissioner Pete Rozelle later reported that the closed circuit firm that offered the game in New Orleans lost over \$25,000, while selling a little over 1,600 of a possible 14,000 seats.<sup>40</sup>

Congress began turning more of its attention toward television blackouts in 1971. In February of that year, Senator William Proxmire (D-Wisc.) suggested that games not be blacked out when the game is sold out of tickets.<sup>41</sup> Later, in April, 1971, Proxmire submitted a bill to that effect.<sup>42</sup>

There is more than one explanation for the introduction of that legislation at that time. Harry Shooshan, former counsel to the House Communications Subcommittee maintains that:

Public pressure on Congress and the League began to mount after the television blackout of Miami, Florida, for the NFL Championship Game (the Super Bowl) played there in January 1971, despite the fact that all 80,000 seats were sold in advance.<sup>43</sup>

Broadcasting magazine reported that:

Acceleration of complaints against pro-football blackouts came, according to one source, when it was reported that in the past season 97% of seats in National Football League stadiums were sold--meaning that fans could not buy tickets [nor] could they see games via TV.<sup>44</sup>

The Proxmire bill was referred to the Senate Judiciary Committee, which did nothing about it in 1971. According to Shooshan:

It was not until 17 months after the referral of the Proxmire bill that the committee finally moved off dead center on the blackout issue, and in doing so catalyzed a flurry of congressional activity.<sup>45</sup>

It is this "flurry of congressional activity" that is the focus of Chapters II and III of this paper.

## NOTES

<sup>1</sup>Donald E. Parente, "The Interdependence of Sports and Television," Journal of Communication, 27, p. 128.

<sup>2</sup>Ibid., p. 129.

<sup>3</sup>"A \$40-million bill for baseball," Broadcasting, February 22, 1971, p. 19.

<sup>4</sup>Erik Barnouw, The Golden Web--A History of Broadcasting in the United States, Vol. II, 1933-1953 (New York: Oxford University Press, 1968), p. 125.

<sup>5</sup>John Porterfield and Kay Reynolds, eds., We Present Television (New York: W.W. Norton & Company, Inc., 1940), pp. 201-202.

<sup>6</sup>Parente, A History of Television and Sports, pp. 50-51.

<sup>7</sup>Porterfield and Reynolds, We Present Television, p. 202.

<sup>8</sup>Parente, A History of Television and Sports, p. 55.

<sup>9</sup>Ibid., p. 56.

<sup>10</sup>Ibid., p. 58.

<sup>11</sup>United States v. National Football League et al., 116 F. Supp. 319 (E.D. Pa. 1953), reprinted in Blackout of Sporting Events on TV, Hearings Before the Subcommittee on Communications of the Committee on Commerce, United States Senate, 92nd Congress, Second Session, on S. 4007 and S. 4010, (Washington: U.S. Government Printing Office, 1972), pp. 170-181. (Referred to hereafter as "1972 Senate Hearings").

<sup>12</sup>Ibid.

<sup>13</sup>Ibid., p. 177.

<sup>14</sup>Ibid., p. 174.

<sup>15</sup>Ibid.

<sup>16</sup>Ibid., p. 175.

<sup>17</sup>Ibid., p. 176.

<sup>18</sup>"Federal Judge Rules Pro Gridgers May Blackout TV at Home Games," Broadcasting, November 16, 1953, p. 52.

<sup>19</sup>Ira Horowitz, "Sports Telecasts: Rights and Regulations," Journal of Communication, 27, p. 163.

<sup>20</sup>United States v. National Football League et al., 196 F. Supp. 445 (E.D. Pa. 1961), reprinted in 1972 Senate Hearings, pp. 181-183.

<sup>21</sup>Ibid., p. 183.

<sup>22</sup>"\$9.3 million CBS football pact held illegal," Broadcasting, July 24, 1961, p. 61.

<sup>23</sup>75 Stat. 732.

<sup>24</sup>"Cellar sports bill goes to White House," Broadcasting, September 25, 1961, p. 56.

<sup>25</sup>See testimony of NFL Commissioner Pete Rozelle in Telecasting of Professional Sports Contests, Hearing before the Antitrust Subcommittee of the Committee on the Judiciary, House of Representatives, 87th Congress, First Session on H.R. 8757, (Washington: U.S. Government Printing Office, 1961), pp. 4-43. (1961 House Hearings).

<sup>26</sup>Ibid., pp. 66-68.

<sup>27</sup>Ibid.

<sup>28</sup>Ira Horowitz, "Sports Broadcasting" in Roger G. Noll, ed., Government and the Sports Business, (Washington, D.C.: The Brookings Institution, 1974), pp. 287-288.

<sup>29</sup>Ibid.

<sup>30</sup>"\$29 million for 1964 football," Broadcasting, August 10, 1964, p. 27.

<sup>31</sup>Horowitz, Government and the Sports Business, p. 287.

<sup>32</sup>"Majors get \$25 million for '65 rights," Broadcasting, March 1, 1965, p. 44.

<sup>33</sup>"TV Blackout--Lee Enterprises, Inc.--CBS," 27 FCC 2d. 887.

<sup>34</sup>Ibid., 891.

<sup>35</sup>Ibid.

<sup>36</sup>H.R. 15128, 91st Cong., 1st Sess. (1969).

<sup>37</sup>Harry M. Shooshan, III, "Confrontation With Congress: Professional Sports and the Television Antiblackout Law," Syracuse Law Review, 25, p. 716.

<sup>38</sup>"A challenge to pro-gridiron blackouts," Broadcasting, March 23, 1970, p. 44.

<sup>39</sup>Ibid.

<sup>40</sup>1972 Senate Hearings, p. 60.

<sup>41</sup>"Pro-football blackout rule due for airing, "Broadcasting, February 15, 1971, p. 9.

<sup>42</sup>S. 1521, 92nd Cong., 1st Sess. (1971).

<sup>43</sup>Shooshan, Syracuse Law Review, 25, p. 716.

<sup>44</sup>Broadcasting, February 15, 1971, p.9

<sup>45</sup>Shooshan, Syracuse Law Review, 25, p. 717.

## CHAPTER II THE ANTIBLACKOUT CONTROVERSY IN 1972

Although an antiblackout law would not be passed until 1973, 1972 was the year that investigations and hearings into the feasibility of such a law began in earnest.

The Senate Judiciary Committee had had before it since July of 1971 a bill authorizing the merger of the National Basketball Association and the American Basketball Association. In September of 1972, they were finally ready to present it to the Senate. During the hearings on the bill (S. 2373, 92nd Congress, 1st Session [1971]), the committee had made several additions. The most important addition was an amendment to the 1961 antitrust exemption that would ban blackouts of playoff and championship games in professional baseball, basketball, hockey and football, if the tickets for the games were sold out five days prior to the game day.

The merger bill and the antiblackout amendment did not pass, but Harry Shooshan suggests that "Possibly out of a fear of being preempted, other congressional committees took decisive steps--steps which led directly to the passage of antiblackout legislation."<sup>1</sup>

On September 19, 1972, Senator Robert Griffin (R.-Mich) introduced a bill that dealt exclusively with the blackout problem.<sup>2</sup> Like the addition to the merger bill, S. 4007 concerned amending the antitrust exemption for the professional sports leagues in basketball, football, baseball and hockey. In effect, Griffin's bill would have banned any blackout, regardless of

ticket sales. During the introduction of the bill, Griffin stated:

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. . . . 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.<sup>3</sup>

One day after Griffin introduced his bill, Senator John Pastore (D.-R.I.) introduced a blackout bill of his own, S. 4010.<sup>4</sup> This bill would also amend the antitrust exemption for professional sports. S. 4010 would have put an end to television blackouts of local professional sports events in the four sports concerned, but would do so only ". . . when tickets for admission to such game(s) are no longer available for purchase by the general public forty-eight hours before the scheduled beginning time of such game(s)."<sup>5</sup>

Griffin was a co-sponsor of the Pastore bill, along with ten other Senators, including some prestigious names such as Hubert Humphrey, Edward Kennedy and William Proxmire.<sup>6</sup> Griffin stated, during hearings on both bills, that he was not bound iron-clad to the language in his own bill, and was willing to go along with a sellout-no-blackout connection. He just wanted to see something done about the blackout situation.<sup>7</sup> Proxmire had introduced antiblackout legislation the year before.<sup>8</sup>

Both bills were submitted to the Senate Judiciary and Commerce committees. Pastore, the chairman of the Commerce Committee's Subcommittee on Communications, scheduled hearings first. Griffin was also a member of that subcommittee.

If the reader has not surmised by now that legislation dealing with blackouts concerned mostly professional football, that fact should be made clear. Although other sports were to be affected by all of this action (the other major professional sports; baseball, basketball and hockey),

legislation was introduced because of football blackouts. The 1961 antitrust exemption was asked for by the National Football League. The other sports were included because those were the organized professional sports leagues with whom the television networks had contracts for telecasts. Because S. 4007 and S. 4010 sought to amend that exemption, the other sports were necessarily included in the language of the bills, and representatives of those sports presented testimony before the Communications Subcommittee. The bulk of the testimony for sports interests came from the National Football League Commissioner, Pete Rozelle.

What follows is an argument-by-argument discussion concerning the legislation (S. 4007 and S. 4010) before the Senate in 1972. Rather than chronologically recounting the events that took place during hearings on those bills, the author has chosen to summarize each argument, both in my own words, and as they were expressed by the people involved.

#### Arguments For Passage of Antiblackout Legislation

Among the arguments presented by the supporters of antiblackout legislation were, first, that the NFL was in sound financial shape, and could withstand any losses incurred because of the law. Second, this financial success was attributed to the 1961 antitrust exemption, therefore it was felt that the sports leagues "owed" the Congress a lift of local blackouts. Third, because most of the NFL stadia are taxpayer supported, the taxpayers should be allowed to see the games. Fourth, the airwaves used to televise games are owned by the public, therefore the public should see what it wants; in this case, professional football.

#### NFL Financial Success

The judgement by Judge Grim allowing blackouts in certain situations, and the 1961 exemption for the pro sports leagues came about during a

time of uncertainty for the National Football League. Grim wrote in 1953:

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.<sup>9</sup>

The 1953 Grim decision helped, as Commissioner Pete Rozelle would later say, "balance" the league.<sup>10</sup> In the 41 years of NFL existence up to 1961, 41 franchises had failed.<sup>11</sup> Since then, none have failed.

According to the league, the 1961 Grim decision that nullified the CBS-NFL package contract would have had disastrous effects upon certain teams. Because of the decision, which banned pooled-rights contracts, the television networks announced that they would abandon the practice of telecasting each team's "away" games back to its home territory. CBS had threatened to drop individual contracts with each team, and actively pursue a few of the most successful teams, in order to buy the TV rights to those teams. The NFL was afraid that this would lead to the downfall of several of the teams, because the loss of television revenue would be too much to overcome. The league also thought that the fans in the cities dropped from coverage would be upset that they would not be able to see their team's road games. In danger of losing their network TV coverage were the Green Bay Packers, Minnesota Vikings, Dallas Cowboys, St. Louis Cardinals, Detroit Lions, San Francisco 49'ers and Philadelphia Eagles.<sup>12</sup>

The fact that the NFL was on shaky ground was conceded by the Congress in 1961, and that body allowed the antitrust exemption to be passed. By 1972, however, the NFL was thriving, or so it appeared to Congress. The NFL, however, was still pleading financial hardship as a reason for keeping the local blackout of home games.

But appearances were not in favor of the league. In 1962, the first year for the NFL under their new "package" rights contract with CBS, each

of the teams in the league received \$332 thousand from the network. By 1971, that figure had reached \$1.5 million per team.<sup>13</sup> Also, by 1971, attendance at NFL games had doubled, and, reportedly, 95% of all seats to league games were sold that year.<sup>14</sup>

The Senators did not have to look very far to see a good example of just how successful professional football was. They simply had to examine the success of the Washington Redskins. The Redskins, long a losing football team, had had a change of fortune, and had won a berth in the NFL playoffs. Although the team did not win the league championship, interest was high in Washington, D.C. There were many football fans among the legislators in the nation's capitol. There was a great deal of interest in the Redskins, their "adopted" team. President Nixon was also a follower of football, and was a supporter of antiblackout legislation. The President had stated, before the Senate held its hearings, that he wanted antiblackout legislation passed before Congress adjourned that year. Pastore cited Nixon's support for the antiblackout bill, and said that because of that support, "This has become a national crisis."<sup>15</sup>

The Redskins were so popular that they had sold out all of their regular season home games before the season started. Many Representatives and Senators were unable to get tickets to see the Redskins, and were also unable to see those home games on television. This, combined with letters from constituents back home, complaining of the same type of problem, made it appear that the NFL did not need to black out home games locally.

Pre-season sell-out situations were present elsewhere, including Kansas City, where the Chiefs were moving into brand-new Arrowhead Stadium that season. Kansas City had been involved in the American Football Conference (AFC) championship playoffs the preceding season, and Chiefs

fans had bought all of the tickets for all of the home games in the 80,000 seat stadium before the season began.

In testimony before Pastore's communications subcommittee, Federal Trade Commission (FTC) chairman Miles Kirkpatrick stated that although the FTC couldn't say whether a lift of local blackouts would hurt professional football's financial condition, the commission could say that:

. . . 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.<sup>16</sup>

Federal Communications Commission chairman Dean Burch also testified before the subcommittee, coming out in favor of antiblackout legislation because it would serve the "public interest." But the commission said it could not judge the effects of antiblackout legislation on the sports leagues.<sup>17</sup>

#### The 1961 Antitrust Exemption

The Congress and the public had drawn a direct relationship between the 1961 antitrust exemption that allowed pooled rights for the NFL and other professional sports leagues, and the subsequent financial gains made by the leagues. Taken one step further, this led to statements concerning the "exceptional treatment"<sup>18</sup> given the leagues, and their responsibility to the public as a result of that treatment.

As Senator Pastore stated, "You have the whole loaf, and you do not want to give the public a slice."<sup>19</sup> That was a theme that Pastore dwelt upon throughout the 1972 hearings into antiblackout legislation:

The airwaves belong to the public; you are using them, and you have a right to use them; and have a right to make a profit on it. Now, all this Congress is saying (to professional football) 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?"<sup>20</sup>

Later, Pastore left no doubt about his feelings, " . . . frankly, I think you (NFL) owe us (Congress on behalf of the viewing public) a little something . . . I do not think we owe you a full house."<sup>21</sup>

Pastore used the "you owe us" argument several times in leading up to asking Rozelle to allow the NFL to try lifting local blackouts voluntarily when games were sold out. Three times during Rozelle's testimony before the committee he was asked to lift blackouts voluntarily.<sup>22</sup> Rozelle did not fold under this pressure.

Pete Rozelle has been described as "a tough, hard but straight-forward bargainer . . . always in total control of himself."<sup>23</sup> He constantly took the full brunt of criticism from a basically hostile subcommittee, and stuck to his own arguments against antiblackout legislation (which will be explained later). He never gave in to Pastore's requests for a voluntary trial, but did promise to take it under "serious consideration."<sup>24</sup>

Rozelle later offered one concession to Congressional pressure. In a press release October 12, 1972, the NFL Commissioner announced that the league would " . . . televise the Super Bowl game in Los Angeles, site of the game, if all tickets were sold by ten days prior to its playing on January 14, 1973."<sup>25</sup> It was termed an "experiment" for the league concerning blackouts. The league was throwing a bone to the Congress. But if Rozelle had hoped that it would, figuratively, satisfy the Congressional appetite for football on television, he was wrong. By that time, plans were going ahead for another Congressional review, this time by the House Communications Subcommittee. A spokesman for the chairman of that subcommittee, Torbert Macdonald (D-Mass) said that he " . . . doubted that the Super Bowl experiment would provide any meaningful conclusions."<sup>26</sup> Los Angeles had been the site of the first Super Bowl, one of the two championship games that, up to that time, had not sold out.<sup>27</sup>

### NFL Stadia are Taxpayer Supported

Senator Marlow Cook of Kentucky called it " . . . inequity at its worst"<sup>28</sup> that people who pay taxes to build and support a football stadium could not buy a ticket to a game or see the game on television. He introduced a letter into evidence, at the Senate hearings on S. 4007 and S. 4010, from one of his constituents, dated September 22, 1972. The constituent was a resident of Kentucky who lived just across the Ohio River from Cincinnati, home of the NFL Bengals. The man worked in Cincinnati, and paid a city payroll tax,

. . . so I along with thousands of others help pay off the deficit on the stadium (in Cincinnati). This is the Bengals fifth season and I and my family . . . 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.<sup>29</sup>

Similar tales came from other sources. The most complete statement came from Democratic Representative William Randall, whose Fourth District in the state of Missouri includes Jackson County. Jackson County is the home of Arrowhead Stadium, where the Kansas City Chiefs play football. Randall was joined in testimony by the Hon. George Lehr, Presiding Judge of the Jackson County Court.

Arrowhead Stadium had just opened that year, and the support for the Chiefs in the Kansas City area was so great that the stadium was sold out for the entire regular season before the season started. As it turned out, more people from outside of Jackson County were able to attend the games than those people who were Jackson County residents, according to the testimony of Judge Lehr. The project to build the Truman Sports Complex (Arrowhead Stadium and Royals Stadium, where professional baseball is played) started out as a \$43 million job in 1967, but the final figure for construction costs was around \$100 million, with Jackson County residents

supplying the tax revenues to pay off the bonds that were sold to finance construction. Lehr summed up by saying, "We love the teams (Chiefs and Royals), but we are subsidizing them."<sup>30</sup> Both he and Randall felt that the games that were sold out should have been televised.

#### Publicly-Owned Airwaves

It is an old concept, that the airwaves which broadcasters use belong to the public. The concept is a major reason why broadcasting is regulated by the government. If someone is going to use a natural, publicly-owned resource (the airwaves), then someone else should make sure that the user is operating in "the public interest." Therefore, broadcasters are licensed by the government, with the Federal Communications Commission acting as the regulator.

The question arises, "Is it in the public interest to refuse to allow the viewing public to see an event that they want to see?" Of course, that same case could be made for pornographic movies on over-the-air free TV. However, the apparent widespread support for the sports antiblackout effort would seem to indicate that it might have been in the public interest to disallow blackouts in certain situations.

A common argument stated by the Senators on the Communications Subcommittee was that professional sports team owners in general, and football team owners specifically, were getting rich by using the airwaves to their own advantage. By using the exemption from antitrust laws that was given the pro leagues in 1961, they had reaped the benefits of collective bargaining in the sale of TV rights. Such a theme upset Senator Vance Hartke (D-Ind.), who verbally lashed NFL Commissioner Pete Rozelle:

This (television) is a public medium. . . . 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 (exemption) 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. . . I don't see anything in the law or the public interest to merely guarantee that the football owners get wealthy.<sup>31</sup>

One witness supporting the antiblackout measures, Robin Ficker, the President of a Washington Redskins fan club, struck out at more than just the owners of professional sports teams:

We speak as sports fans who feel that their rights as consumers are not taken care of or even considered by the Redskin 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.<sup>32</sup>

Of course, the fan club didn't really know who to blame for the blackouts, and it was very easy to blame the television networks and the federal agencies. But the networks and the agencies were supporters of antiblackout legislation. For example, John Schneider, President of the CBS Broadcast Group said that, "not only is CBS ready, willing and able to broadcast hometown games on television, CBS is anxious to do so."<sup>33</sup>

Roone Arledge, President of ABC Sports noted, "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."<sup>34</sup>

In its statement, NBC called for the lifting of blackouts of " . . . major events, such as the playoffs, conference, league and world championships and all-star games of each of the major professional sports . . ." without considering whether or not the contests were sold out.<sup>35</sup> According to the network, this would provide "experience" to judge whether or not regular season games should have been treated similarly.

Federal Trade Commission Chairman Miles Kirkpatrick did not actually

come out in favor of the antiblackout bills. He said that he couldn't because he could not predict the effects of such action on the professional sports leagues. In effect, though, he did say that the FTC would go along with the Subcommittee's decision regarding the public interest aspects of the question.<sup>36</sup>

Federal Communications Commission Chairman Dean Burch was more forthright about that body's support for antiblackout measures:

. . . the goal of the (Communications) Act (for stations to serve the public interest) would be well served by the enactment of such bills as S. 4010 and S. 4007 and the Commission supports and welcomes this result.<sup>37</sup>

The FCC may have also felt that passage of the antiblackout bill might start to slow down some of the public pressure they were receiving about blackouts of home games. During the 1971 football season, the Commission had received over 100 letters complaining about blackouts.<sup>38</sup>

The question of whether blackouts are in the public interest continued to prompt discussion even after the passage of legislation. In 1978, Robert S. Peterson, a lawyer fighting for the abolition of college football blackouts, wrote that he was " . . . of the opinion that arrangements which permit the blacking-out of local broadcast areas are violative of the Communications Act."<sup>39</sup> He argued that the licensee (individual television or radio station) has the authority and responsibility to make programming decisions, and that the networks should not be able to exclude certain stations from a feed of events of local interest.<sup>40</sup>

#### Other Arguments

Another of the pro-antiblackout arguments concerned what in the final analysis was probably the main interest of most of the parties involved. This included the team owners, the NFL and the broadcasters. That argument concerned money. Senator Pastore made it one of his major points: that if home games were opened up to local broadcast, a whole new advertising

market would be created. The chances for larger audiences for local games were good. A larger audience could mean that both the network and the local station could charge more for advertising time during the game. In turn, when it came time for the NFL to re-negotiate its TV contracts with the networks, the league could demand a higher price for television rights.<sup>41</sup>

Perhaps another sticking point for the members of the subcommittee was the actual allocation of season tickets. Pastore made some reference to "industrialists"<sup>42</sup> who would buy tickets for use by clients or potential business associates, thereby denying some "loyal local fans" the opportunity to buy the tickets. In later testimony, a Washington Post article was submitted into evidence. That article revealed some of the groups that owned season tickets to Washington Redskins football games for the 1972 season. Among the names of groups or businesses that owned tickets, and the number of tickets owned:<sup>43</sup>

ADS Corp., Landover, MD.	80
Blue Lines	68
C & C Linen Service, Inc.	62
D & H Distributing	50
Frank's Lounge	50
General Telephone & Electric	22
Minnesota Mining (3M)	48
Remington-Rand	43
Tenneco, Inc.	29
Windsor Park Hotel	200

There was also one individual who had bought 90 of the season tickets.<sup>44</sup> And the listing in the Post article was only partial, at that.<sup>45</sup>

Of course, the bulk of this argument did not concern changing the ticket allocation structure of each of the NFL clubs. It was thought that because "loyal fans" were being left out at the ticket window, they should have been allowed to see their local team on television, when the team played before a sellout crowd at home.

### Arguments Against Antiblackout Legislation

Among the arguments presented by opponents of antiblackout legislation were, first, that the Congress and public were examining the blackout issue without a true understanding of the sports leagues' source of blackout rights. Second, the leagues argued that passage of an antiblackout law would result in a decline in ticket sales. Third, the leagues claimed that the law would result in a greater number of "no-shows," those who buy a ticket, but do not attend the game. Fourth, it was the NFL's position that the law would cause overexposure of professional football, thereby killing interest in the sport.

The major witness in defense of sports blackout policies was National Football League Commissioner Pete Rozelle. Rozelle was accompanied by three NFL team representatives: Gerald Phipps, Chairman of the Board, Denver Broncos; Art Rooney, Sr., President, Pittsburgh Steelers; and Jim Finks, Vice President, Minnesota Vikings.<sup>46</sup> Representatives of other professional sports were also invited to testify, but because the antiblackout bills were aimed primarily at NFL games, the testimony presented by Rozelle was, perhaps, the most important. The nature of the committee to favor the legislation has been pointed out; however, Senator Pastore tried to reassure Rozelle that the committee did not regard him as a "hostile witness." Pastore encouraged Rozelle to " . . . feel free, you are among friends."<sup>47</sup> Despite the kind words, Rozelle was faced with much opposition to his ideas, as well as a number of interruptions during his testimony by Senators trying to make a point.

### Fundamental Misunderstandings

Rozelle's "toughness" as a negotiator has been mentioned before, and he started off his testimony by trying to change the terminology of the

entire controversy. He argued that,

. . . it is not a blackout issue at all. NFL home territories are no longer blacked out on television on Sunday afternoons . . . . 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.<sup>48</sup>

Rozelle brought up the NFL opinion that there were " . . . some very fundamental misunderstandings about the legal context of this proposal."<sup>49</sup> Included among those misunderstandings was the idea that home game blackouts had been a major issue in the 1953 litigation before Judge Grim. It had not. Local blackouts of home games had been, at the time, an assumed right of each club. That decision authorized the blackout of outside games while a team was playing at home. There were no restrictions on teams concerning home telecasts. They could have broadcast home games locally had they wanted to do so. The teams did not choose to broadcast locally.

Another misunderstanding was that the "source of the league's present practice is an antitrust immunity granted . . . in 1961."<sup>50</sup> Rozelle claimed that locally blacking out a home game was not a part of that antitrust immunity, "Congress never intended to deal with it in 1961."<sup>51</sup> Rozelle was right. The antitrust amendment dealt primarily with pooled-rights TV contracts. It also allowed the same blackouts allowed by Grim in 1953.

#### Ticket sales

Rozelle went to great lengths in his opposition, and painted a strange scenario for the members of the subcommittee:

. . . 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 on television in the comfort of his home . . . by appearing at the team's local ticket office at any time before 1 p.m. on the Friday preceeding the game.<sup>52</sup>

Rozelle claimed that an odd Friday ticket line would be the result, with everyone trying to be the last in line. He reasoned that the average

consumer would be a part of this endless line in the hope that the game would sell out before he or she got to the ticket window. Thus, the game would be televised, and the consumer would be happy at home watching the game. Rozelle asserted that those fans treated to home TV of local games free of charge would hesitate to pay for the privilege of going to the game.

Art Rooney, President of the Pittsburgh Steelers, commented that buying tickets to a home game was the "thing to do" in order to see your local team's home game.<sup>53</sup> Gerald Phipps expanded on that thought. According to Phipps, if local blackouts were lifted, "the thing to do" would be to wait and see if the game were going to be on television before making a buying decision, "Now, once you eliminate that psychology and say you do not have to buy a ticket in order to see a game, the season ticket sale goes down."<sup>54</sup> And Rozelle added:

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.<sup>55</sup>

Walter Kennedy, the Commissioner of the National Basketball Association (NBA)<sup>56</sup> and Robert Carlson, President of the American Basketball Association (ABA)<sup>57</sup> expressed similar concerns over possible declines in ticket sales.

Don Ruck, Vice President of the National Hockey League, reported on some experimentation which that league had conducted on lifting local blackouts. Their data indicated a pattern of lost gate receipts when games were not locally blacked out. The league was assuming, of course, that those games locally telecast were going to be sold out. Most of their experimentation was on Stanley Cup (NHL Championship Series) games, which, historically, were played to a capacity crowd. With the blackout lifted, however, the games did not generally sell out.<sup>58</sup>

### No-Shows

"No-shows" were primarily a concern of the National Football League. No-shows are those people who, having already bought tickets to a particular game, do not attend that game for one reason or another. Rozelle argued that:

. . . 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.<sup>59</sup>

Rozelle testified that, because of the limited number (14 at that time) of regular season games, professional football had to maximize attendance. Of those 14 games, only seven were home games. While comparing that figure with the 162 games played by Major League baseball teams, and the approximately 80 games played by the pro basketball and hockey leagues, Rozelle said that football " . . . can't offset well-attended games against games that are not well-attended."<sup>60</sup>

According to Rozelle, the availability of local television would allow those who would ordinarily attend a game played under adverse weather conditions, to stay at home and watch the game. Rozelle presented evidence of no-shows caused by bad weather, and said that if local blackouts were lifted, the number of no-shows would soar, " . . . and it should be obvious that persons then would stop buying tickets."<sup>61</sup>

A large amount of no-shows could also have an effect upon how a team actually plays. That argument came from Minnesota Vikings General Manager Jim Finks. He gave credit to the crowd for their support of the team in one 1969 playoff victory. According to Finks, the Vikings had enough trouble with weather-related no-shows, and to combine that with those who would say, "'Why don't we go home and watch the rest of the game on television?'"<sup>62</sup> would be disastrous to the morale of the players. "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 . . ."<sup>63</sup>

According to Rozelle, no-shows would hurt the financial viability of the stadiums where the games were played. Rozelle and other team officials argued that loss of attendance would reduce both parking and concession receipts. In testimony favoring antiblackout legislation, the committee had heard how citizens were entitled to see all of the local games because they had helped pay for the building of the stadium. In many cases, the team and the stadium authority (sometimes the city) split the revenue from parking and concessions. That revenue, in turn, was used to pay off the outstanding bonds issued to fund the stadium. Pete Rozelle commented that "the taxpayer burden will be greater if this bill passes."<sup>64</sup> The stadium would be losing money if there were 20,000 to 30,000 no-shows due to a combination of bad weather and local television. Some other source of funding would have to be found to pay off the bonds, and Rozelle suggested that the burden would fall back on the taxpayer.<sup>65</sup>

Should the football teams begin to lose money by not having a full stadium, there was even the threat that a city could lose its team. Denver Broncos official Gerald Phipps said that lifting local blackouts would be " . . . the first step to seeing that Denver cannot keep professional football."<sup>66</sup> Rozelle called the bills "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.<sup>67</sup>

#### Television Overexposure

The NFL felt that there was enough professional football available on television already, and any more might cause "overexposure:" too much TV football for the good of football. Commissioner Rozelle cited a popular example of television overexposure: boxing.

. . . from January 1953 to January 1955--there were five weekly network boxing telecasts. By May 1958 there were two, by September, 68 1964 there were zero. The sport simply ate itself with overexposure.

He also presented the results of a poll conducted for the NFL by Lou Harris. 1,991 households were surveyed for their opinions on the amount of professional football on television.

TABLE 1  
AMOUNT OF PRO FOOTBALL ON TV

	%total	%men	%women
Too much	21	17	27
Too little	7	9	5
About right	71	73	67
Not sure	1	1	1

Source: 1972 Senate Hearings, p. 57.

Rozelle felt that lifting local blackouts would increase the amount of televised football for an otherwise football-soaked audience. As a result, football, like boxing would televise itself to death. Pittsburgh Steeler owner Art Rooney agreed with Rozelle:

I believe that that could happen very easily, that if we show 14 games . . . on the television, I am afraid that maybe it (going to pro football games) will get to be the thing not to do.<sup>69</sup>

#### Other Arguments

There were other arguments put forward by opponents of antiblackout legislation. The bills would reduce the value of the NFL teams' radio rights. Team owners should not be forced to "give away" their product. Loyal fans might be upset when they find out that a game for which they had bought a ticket, assuming it would not be televised, was televised. The general economy should rule professional sports' blackout policies.

Commissioner Rozelle made a threat in his argument concerning radio

rights for NFL teams:

Metromedia Radio, which has four of our member club contracts, 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.<sup>70</sup>

He also felt that regional radio networks would go out of business because of local telecasting. That, in turn, would harm smaller radio stations, by depriving them of professional football broadcasts. Football team-radio station cooperation in public service campaigns was noted, "and this blackout measure could result in harming public service efforts for the future."<sup>71</sup> Rozelle testified that there was a reported 80% drop in radio audience when a game was televised locally.<sup>72</sup>

The marketing prerogative of professional sports was defended as well. Sports were equated with other forms of entertainment, namely, plays and circuses. Entertainment's responsibility is to the paying members of the audience. Walter Kennedy, the Commissioner of the NBA, put it this way:

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. . . . You (Congress) should assume . . . 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.<sup>73</sup>

ABA President Robert Carlson agreed with Kennedy:

A sports team owner has one product to sell . . . the competition between his team and the teams owned by his partners. . . . when you give away your product, as this bill would have us (ABA) do, you are bound to lose money.<sup>74</sup>

National Hockey League Vice President Don Ruck related an experience in which fans disapproved of the lifting of a local blackout. In 1969, during the Stanley Cup playoffs, the NHL decided to lift the local blackout of a St. Louis Blues - Philadelphia Flyers game. The decision was made about

48 hours before the game:

The fans who had already purchased tickets to the game besieged the Philadelphia Flyers' management with complaints. . . . Fans denounced the team for acting in bad faith. . . . Many . . . in the media community chastised the Flyers for the act of bad faith.<sup>75</sup>

The fans were upset because the decision was made so close to the time of the game. Flyer and NHL officials interpreted the uproar to mean that the fans would not have paid good money for the tickets had they thought that the game was going to be on television. "Overall," said Ruck, "it was not what you would call a pleasant public relations experience."<sup>76</sup>

Baseball Commissioner Bowie Kuhn cited what he called the "economic regulator factor." He felt that professional sports operated within the realm of the entertainment field. Kuhn thought that if one professional sport was not serving the public interest by not telecasting a contest in which there was great interest, one of the other members of the sports or entertainment field would take up the slack:

For instance, if baseball were not to present enough of its games on television with the overlap of the (sports) 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.<sup>77</sup>

Some of the sports officials claimed that the actual telecast of a game could not be set up in just 48 hours. Carlson of the ABA spoke of the networks and their difficulty in selling sports programs before the beginning of the season. The sponsors would not know what prime markets might or might not be blacked out.<sup>78</sup> NBA Commissioner Kennedy had the same argument, plus he asked how scheduled shows could be preempted and how ". . . last minute arrangements for cable and similar facilities . . ." could be made to air the show locally. NFL Commissioner Rozelle had similar fears, and called the 48 hour time period, "extremely difficult."<sup>80</sup>

### Reaction to Arguments Against the Legislation

Of course, members of the subcommittee were not sympathetic to the arguments of the professional sports representatives. Senator Pastore didn't feel that the leagues had proof that passage of either of the bills would cause a drop in ticket sales. As mentioned before, this led Pastore to ask repeatedly for the leagues (the NFL in particular) to "try" a voluntary lift of local blackouts.

At times, Pastore scoffed at the NFL's fear of no-shows, which was accompanied by the fear of loss of parking and concession revenues. He attacked NFL Commissioner Pete Rozelle's stance:

. . . 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 the game on television?<sup>81</sup>

Senator Glenn Beall of Maryland called Rozelle's prediction of disaster for NFL radio contracts, "far fetched," and noted that people in cars would be listening.

Football is too popular. I cannot imagine the day coming in our time, when football teams have to go out and pay (radio) stations to carry their games . . ."<sup>82</sup>

NAB President Vincent Wasilewski later agreed with Beall that he thought there was no cause for alarm concerning radio contracts.<sup>83</sup>

Senator Pastore refuted claims of sports' rights to determine how they would "market" their "product" by stating that there was a difference between pro sports and the other forms of entertainment. That difference was the 1961 antitrust exemption granted to the leagues, that allowed them to pool broadcast rights:

We are not talking about a package deal when it comes to Barnum & Bailey (circus). We are not talking about a package deal when it comes to Kennedy Center, . . . they don't need an exemption under the antitrust laws.<sup>84</sup>

The sports interests had argued that 48 hours would be too short a time to set up a local telecast. That was not the case, according to CBS Broadcast Group President John Schneider:

We (CBS) 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. . . . It is a matter of plugging another station in. . . . It is instantaneous.<sup>85</sup>

Schneider also said that affiliates who could possibly be affected by the lifting of a local blackout could have "contingency programming" scheduled during the time of the game. That programming would be easy to move if the local blackout were lifted as soon as 48 hours prior to the game.<sup>86</sup>

## NOTES

- <sup>1</sup>Shooshan, Syracuse Law Review, 25, p. 718.
- <sup>2</sup>S. 4007, 92nd Cong., 2nd Sess. (1972).
- <sup>3</sup>118 Cong. Rec. 31155 (1972) (remarks of Senator Griffin).
- <sup>4</sup>S. 4010, 92nd Cong., 2nd Sess. (1972).
- <sup>5</sup>118 Cong. Rec. 31490 (1972) (remarks of Senator Pastore).
- <sup>6</sup>Ibid.
- <sup>7</sup>1972 Senate Hearings, p. 11.
- <sup>8</sup>S. 1521, 92nd Cong., 1st Sess., (1971).
- <sup>9</sup>Reprinted in 1972 Senate Hearings, p. 174.
- <sup>10</sup>1961 House Hearings, p. 4.
- <sup>11</sup>Ibid.
- <sup>12</sup>Ibid., p. 5.
- <sup>13</sup>1972 Senate Hearings, p. 66.
- <sup>14</sup>Ibid., p. 8.
- <sup>15</sup>Ibid., p. 65.
- <sup>16</sup>Ibid., p. 38.
- <sup>17</sup>Ibid., p. 127.
- <sup>18</sup>Ibid., p. 38.
- <sup>19</sup>Ibid., p. 64.
- <sup>20</sup>Ibid., p. 66.
- <sup>21</sup>Ibid., p. 79.
- <sup>22</sup>Ibid., pp. 54, 66, & 82.
- <sup>23</sup>"Pete Rozelle and the painless extraction of \$606 million," Broadcasting, September 22, 1975, p. 48.
- <sup>24</sup>1972 Senate Hearings, p. 82.
- <sup>25</sup>NFL Press Release, October 12, 1972, reprinted in 1972 Senate Hearings, p. 203.

<sup>26</sup>"Rozelle offers next Super Bowl to test home TV," Broadcasting, October 16, 1972, p. 54.

<sup>27</sup>"As we see it," TV Guide, November 25, 1972, p. 1.

<sup>28</sup>1972 Senate Hearings, p. 13.

<sup>29</sup>Ibid.

<sup>30</sup>Ibid., p. 27.

<sup>31</sup>Ibid., pp. 71-72.

<sup>32</sup>Ibid., p. 108.

<sup>33</sup>Ibid., p. 142.

<sup>34</sup>Ibid., pp. 147-148

<sup>35</sup>Ibid., p. 123.

<sup>36</sup>Ibid., pp. 37-38.

<sup>37</sup>Ibid., p. 127.

<sup>38</sup>Ibid., p. 161.

<sup>39</sup>Robert S. Peterson, "Focus on Sports Law," Journal of Contemporary Law, 4, p. 147.

<sup>40</sup>Ibid., p. 148.

<sup>41</sup>1972 Senate Hearings, pp. 146-147.

<sup>42</sup>Ibid., p. 39.

<sup>43</sup>Ibid., pp. 112-114.

<sup>44</sup>Ibid.

<sup>45</sup>Ibid.

<sup>46</sup>Ibid., p. 49.

<sup>47</sup>Ibid., p. 52.

<sup>48</sup>Ibid., p. 50.

<sup>49</sup>Ibid., p. 53.

<sup>50</sup>Ibid.

<sup>51</sup>Ibid.

<sup>52</sup>Ibid.

- <sup>53</sup>Ibid., p. 74.  
<sup>54</sup>Ibid., p. 78.  
<sup>55</sup>Ibid., pp. 59-60.  
<sup>56</sup>Ibid., p. 84.  
<sup>57</sup>Ibid., p. 89.  
<sup>58</sup>Ibid., pp. 90-91.  
<sup>59</sup>Ibid., p. 55.  
<sup>60</sup>Ibid.  
<sup>61</sup>Ibid., p. 59.  
<sup>62</sup>Ibid., p. 81.  
<sup>63</sup>Ibid.  
<sup>64</sup>Ibid., p. 55.  
<sup>65</sup>Ibid.  
<sup>66</sup>Ibid., p. 79.  
<sup>67</sup>Ibid., p. 59.  
<sup>68</sup>Ibid., p. 57.  
<sup>69</sup>Ibid., p. 74.  
<sup>70</sup>Ibid., p. 60.  
<sup>71</sup>Ibid.  
<sup>72</sup>Ibid.  
<sup>73</sup>Ibid., p. 85.  
<sup>74</sup>Ibid., p. 88.  
<sup>75</sup>Ibid., p. 92.  
<sup>76</sup>Ibid.  
<sup>77</sup>Ibid., p. 136.  
<sup>78</sup>Ibid., p. 89.  
<sup>79</sup>Ibid., p. 86.  
<sup>80</sup>Ibid., p. 65.  
<sup>81</sup>Ibid., p. 56.  
<sup>82</sup>Ibid., p. 62.  
<sup>83</sup>Ibid., p. 155.  
<sup>84</sup>Ibid., p. 51.  
<sup>85</sup>Ibid., p. 144.  
<sup>86</sup>Ibid.

CHAPTER III  
1973: ANTIBLACKOUT LEGISLATION PASSES

Pre-Hearing Activity

A Presidential Request and an NFL Offer

The National Football League allowed the 1973 Super Bowl game to be broadcast locally in Los Angeles providing the game sold out (which, by the way, it did). Before that broadcast, however, on December 20, 1972, President Nixon ordered Attorney General Richard Kleindienst to ask NFL Commissioner Pete Rozelle to lift the local blackouts of the remaining play-off games.<sup>1</sup> Rozelle refused to allow the lift. Kleindienst then said that "he planned to urge the Congress to 're-examine the whole antitrust exemption statute.'"<sup>2</sup> The broadcasting industry felt that Rozelle may have erred badly by refusing the President's request. Broadcasting magazine stated editorially,

Whether this (blackout) is an area where the administration ought to be operating is open to debate . . . . But Mr. Rozelle or the owners, or both, seem not to have scouted their opposition very well. There is already strong antiblackout sentiment in Congress, which the administration's move could inflame.<sup>3</sup>

During the 1972 Senate hearings on the antiblackout legislation, Rozelle agreed that the NFL would produce their own study on how the proposed legislation would affect the league. That study was presented to Senator Pastore at a meeting between the two men on May 3, 1973. Pastore reported that the study indicated that " . . . some of its clubs have stadium leases and concessionaire contracts which will be affected by the

legislation."<sup>4</sup> Regarding the possible effects upon NFL radio rights, the league warned that local broadcasts could keep blind people from hearing a good description of the games.<sup>5</sup> Shooshan called the document inflexible, with little "spirit of compromise."<sup>6</sup>

At that meeting, Rozelle made two more offers for experimentation with local telecasts. One of those was to lift the blackout of the 1974 Super Bowl game, to be played in Houston, Texas. Also, he offered to telecast the home games of the New York Giants during the 1973 season, as long as they were sold out. The Giants were moving their home schedule that year to New Haven, Connecticut, because of the repair work being done on the team's usual home field, Yankee Stadium. However,

Yale officials were prepared to deny the Giants the use of the (Yale) Bowl . . . unless the team agreed not to black out the New Haven-Hartford market. In sum, Rozelle was offering Senator Pastore only what he knew he would have to give up anyway.

Pastore found the offers to be "not a meaningful experiment, and . . . therefore unacceptable."<sup>8</sup> As a result, Pastore introduced S. 1841, another antiblackout bill.<sup>9</sup> This bill differed from the bills introduced the year before. First of all, the bill proposed an amendment to the Communications Act of 1934 rather than amending the league's antitrust exemption of 1961. Secondly, the bill covered any game televised by one of the four major professional sports, not just games covered by the leagues' arrangements with the national networks. Further, the bill provided for a one-year trial period rather than a permanent law.<sup>10</sup> The time period for a sellout to trigger the lift of a blackout remained at 48 hours, the same as Pastore's 1972 bill, S. 4010. One of the more important facets of S. 1841 was that it covered all of the televised games of the four major sports, rather than those covered in network contracts. This bill would, if passed, have a much greater impact upon baseball, basketball, and hockey

than previous bills. A majority of their games are telecast pursuant to contracts agreed to by the individual clubs, rather than league contracts with a national network.<sup>11</sup> S. 1841 also covered NFL pre-season games, which are televised under agreement between the local team and a local broadcaster.<sup>12</sup> Pastore did not recommend that hearings be held on this new legislation, citing the "extensive hearings held just last year . . ."<sup>13</sup>

Representative Harley Staggers (D.-W. Va.) released some preliminary results of a study conducted for the House Committee on Interstate and Foreign Commerce, of which Staggers was chairman. The study included a survey of NFL season ticket holders. Staggers reported on May 3, 1973, that 65% of those responding to the questionnaire favored lifting local TV blackouts. Sixty-nine percent of the respondents stated that they would continue to buy season tickets in the event that local blackouts were lifted.<sup>14</sup> Staggers also presented that information to Rozelle while Rozelle was in Washington to meet with Senator Pastore.<sup>15</sup> The entire report was released in July, 1973, and will be discussed later in this chapter.

#### Strong Language From the NFL

On July 1, 1973, the CBS-affiliated TV station in Baltimore, Maryland, WMAR, announced that the upcoming season's Washington Redskins home football games would not be aired.<sup>16</sup> It seemed that as the Redskins became a more popular team, the broadcasting of games by the Baltimore station became more of a rarity. In 1971, WMAR had telecast five of the Redskin home games. In 1972, three games were scheduled, but only one was aired. Then for the 1973 season, WMAR was not allowed to air any of the games.<sup>17</sup> During the years 1970, 1971, and 1972, the Redskin won-loss records had been 6-8, 9-4 (1 tie), and 11-3, respectively. Along with the 11-3 record in 1972 came the National Conference championship and a trip to the 1973 Super Bowl.<sup>18</sup> Because the Baltimore stations can be received in Washington, D.C., local

fans were upset at the Redskins and the television station for the lack of TV coverage of the team's home games.

The man who made the decision to deny WMAR the Redskin home games may have provided motivation for Pastore and other congressional leaders to take further action on antiblackout legislation. Robert Cochran, NFL Broadcast Coordinator, made the decision, and defended it vehemently.

We (NFL) are well within our rights to order the blackout . . .  
In this society, people are always wanting to get something they  
shouldn't necessarily have to get . . . they're so spoiled . . .  
We're not going to have you all (public, press) telling us how to  
make up our schedule.<sup>19</sup>

The press labeled Cochran's attitude "arrogant", and it did seem as though he were "daring" someone to do something about the NFL blackout power.<sup>20</sup>

According to Harry Shooshan, then an administrative assistant to House Communications Subcommittee chairman Torbert Macdonald (D.-Mass), "Cochran's intemperate outburst destroyed what little remained of a willingness to compromise on the part of Congress."<sup>21</sup> On July 18, 1973, the Senate Commerce Committee approved S. 1841 on a voice vote.<sup>22</sup> The bill, although different from the legislation that was the subject of hearings the year before, had been sent to the floor of the Senate without hearings. Action on this bill, however, had to wait until the Congress reconvened after its August recess.<sup>23</sup>

#### Antiblackout Bills Introduced in the House

One week before the Senate Commerce Committee voted out Pastore's S. 1841, Representative Dante Fascell (D.-Fla.) introduced H.R. 9188.<sup>24</sup> It was identical to S. 1841. One day after the Senate committee's action, another bill identical to Pastore's measure was introduced in the House by Representative Stanford Parris (R.-Va.).<sup>25</sup> The bill was eventually co-sponsored by 60 members of the House,<sup>26</sup> and was re-introduced ten more times.<sup>27</sup> The bills were identical to the Senate bill introduced by Pastore,

therefore they " . . . would have prevented any party from performing a contract which would not allow telecasting when tickets were not available for purchase 48 hours before game time."<sup>28</sup>

Harley Staggers joined the House move toward antiblackout legislation on July 24, 1973, by introducing his own bill.<sup>29</sup> H.R. 9536 was similar to the legislation that had already been introduced in 1973. It was different in that it would have affected collegiate sporting events as well. The bill also allowed for the possible withholding of tickets until game-day, by stating that only those tickets that had been available for sale 48 hours before game time would be used in determining a sellout.<sup>30</sup>

Two days after the introduction of H.R. 9536, Staggers introduced a second bill, H.R. 9644, to take the place of the former bill.<sup>31</sup> This bill was based on the recommendations of the Special Subcommittee on Investigations of the House Commerce Committee. This subcommittee conducted the afore-mentioned survey of NFL season ticket holders, and investigated the need for blackouts of professional sporting events. The report of that subcommittee, submitted to Staggers, concluded that " . . . the original justification for permitting blackouts, i.e., to assist the clubs in obtaining financial stability, is no longer necessary."<sup>32</sup> The report also recommended that the Communications Act be amended to:

1) prohibit television blackouts in home territories of any professional football club whose tickets for admission to all regular season home games (not necessarily exhibition games) are no longer available for purchase by the general public prior to the beginning of the season; and

2) limit the blackout area for those professional football clubs permitted to have television blackouts of home games to the area of signal penetration by the television stations located in, or that principally serve, the same city as the stadium where the games are played.<sup>33</sup>

Staggers, following the recommendations, limited his second bill to professional football only. Blackouts would be lifted only if a team's

season tickets were sold out one week prior to the start of the season. Post-season games would be televised if all tickets had been sold 48 hours before game-time.<sup>34</sup> If this bill had passed, fewer local blackouts would have been lifted than under the other legislation, and scheduling of telecasts would have been easier as well. But Philip Hochberg, counsel to the National Hockey League, would later write that, ". . . Congress was in no mood to consider carefully-drawn legislation which might not be passed in time for opening of the NFL season. H.R. 9644 never had a chance."<sup>35</sup>

Representative Torbert Macdonald introduced an antiblackout bill on July 25, 1973.<sup>36</sup> H.R. 9553 applied only to the league contracts of professional football, baseball, basketball and hockey. This was different from Senator Pastore's bill, which covered all games telecast. Macdonald's bill differed from H.R. 9644 (Staggers' bill) by determining sellouts on a game-by-game basis using the 48 hour rule, rather than on a seasonal basis. The bill covered all of the pro sports mentioned above, but, "The main thrust of the bill goes to the regular and postseason games of the National Football League."<sup>37</sup> In an obvious attempt to rebuke Robert Cochran, Macdonald charged "certain NFL spokesmen" with having "a general 'public be damned' attitude."<sup>38</sup> He charged the league with "flaunt(ing) the public interest," and stated, "I intend to act with all appropriate haste to see that the sports blackout impasse is broken."<sup>39</sup> As with the other bills that had been introduced in 1973, this one would amend the Communications Act, rather than the 1961 antitrust exemption. To keep his bill before his own Communications Subcommittee, Macdonald drafted the bill as an amendment to the Communications Act,

although section (b) of H.R. 9553 defines "league television contract" in precisely the same manner as it is defined in the 1961 antitrust exemption. In this way, Representative Macdonald was able to secure what was essentially a piece of antitrust legislation for hearings before his Commerce (communications) subcommittee (rather than before the House Judiciary Committee).<sup>40</sup>

Macdonald scheduled hearings on his bill, Staggers' two bills, and the House bills that were identical to Senator Pastore's S. 1841, to begin July 31, 1973.<sup>41</sup>

In the broadcasting industry, there was some grumbling about the kind of legislation being considered. Broadcasting magazine stated, editorially, that passage of an antiblackout bill amending the Communications Act was ". . . not the way to go about it."<sup>42</sup>

To insert in the basic law of broadcast regulation an explicit restriction on explicit types of programming is a deep intrusion into television's First Amendment rights. If the government can dictate the terms of contracts with football, baseball, basketball and hockey teams, cannot it also dictate terms of contracts with other program suppliers?<sup>43</sup>

The magazine felt that " . . . a year's moratorium on the antitrust exemption" would be a better legislative move.<sup>44</sup> During hearings, FCC Chairman Dean Burch expressed concern that the bills would amend the Communications Act. If passed, the legislation would give the FCC, through the networks, some measure of control over the NFL, which is not a broadcast licensee (indeed, the main power the Commission has over the networks is through the licenses of network owned and operated stations). Burch stated, however, that, "we (the FCC) will carry out whatever the Congress desires in the way of blackout legislation."<sup>45</sup>

It appears that, even before hearings began on the bills, opponents of the legislation were conceding its passage. In a Washington Post article that appeared the day that the hearings were to begin, sports writer Shirley Povich indicated that Pete Rozelle had "called off his troops" and would "live with the Pastore Bill."<sup>46</sup> Rozelle confirmed this during the hearings by saying, "We (the NFL) feel that the chances of not having some form of legislation pass this year are quite nil."<sup>47</sup> Other opponents of antiblackout legislation also felt that some type of antiblackout bill would pass that session.<sup>48</sup>

### 1973 House Hearings

The hearings before the House Communications Subcommittee took six days, and were split by Congress' summer recess. During the three days (July 31, August 1, 2, 1973) prior to the recess, the subcommittee heard from a number of witnesses who supported antiblackout legislation, along with a few representatives of sports teams and leagues. NFL Commissioner Pete Rozelle asked the subcommittee to allow him to appear after the break. His request was granted. It was during the summer recess that the Special Subcommittee on Investigations released its report on the necessity of blackouts. It was a 136-page document complete with over one hundred tables designed to defend the subcommittee's conclusion that there was no need to continue the NFL's right to locally black out sold out games.<sup>49</sup> Macdonald was able to use the information gathered in this report in support of his antiblackout position and against the pro-blackout position of Rozelle. One interesting finding of the report was the apparent lack of accuracy on the NFL's part in their methods for determining sellouts. For instance, Cleveland's Municipal Stadium, where the NFL Browns play, had a 1972 seating capacity of 79,282.<sup>50</sup> But the November 19, 1972 game between the Browns and the Pittsburgh Steelers, while recording an attendance of 79,639, was among the games that the NFL listed as non-sellouts.<sup>51</sup> The subcommittee took issue with 23 other games that the NFL had similarly called non-sellouts in 1972.<sup>52</sup>

In spite of this new information, the arguments on the blackout issue remained basically the same. Proponents of antiblackout legislation insisted that the National Football League (as mentioned before, the real target of the measures) was in stable financial condition, unlike the situation in 1961, when the Congress passed the antitrust exemption. Members of the subcommittee cited numerous sellouts (especially Redskin sellouts) and the

rising amount of broadcasting rights money (\$46 million in 1972)<sup>53</sup> as evidence that the league's teams were sound, financially. No NFL franchise had either moved or gone out of business since the 1961 antitrust exemption was passed.

The use of taxpayer-supported stadia was cited as a reason for allowing local telecasting of a sold-out game,<sup>54</sup> as well as pro football's use of the public airwaves for publicity and profit.<sup>55</sup> Widely cited in 1973, as in 1972 in the Senate, was the 1961 antitrust exemption. Again it was widely thought that the league owed Congress a lifting of local blackouts for the exemption. During the 1972 Senate hearings on antiblackout bills, Senator Pastore had used the "you have a whole loaf, give the public back a slice" argument with Rozelle.<sup>56</sup> In 1973, Representative Macdonald created a new catch-phrase.

The Congress gave you an exemption, you took advantage of it and, therefore, now perhaps you (the sports leagues) are going to have to pay your dues. (emphasis added)<sup>57</sup>

Assistant Attorney General Thomas Kauper expressed the administration's support for the congressional action, and stated that:

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.<sup>58</sup>

While proponents of legislation were presenting the same basic arguments, the opponents (though in some cases conceding the passage of legislation) continued to press the same arguments. The NFL and the rest of the sports leagues maintained that the bills, if passed, would hurt ticket sales by causing the consumer to delay his purchasing decision while waiting to see if the game or games would appear on local television. The NFL again expressed concern over a possible increase in no-shows, and the resultant loss of revenue for stadium interests through parking and concession fees.<sup>59</sup> The subcommittee accepted that argument, as well as

the league's claim that radio rights would be de-valued. Macdonald said to a concessionaire who was testifying, "there is nothing you have said that I can dispute . . . every war has some casualties."<sup>60</sup> The National Hockey League repeated its contention that it could show a "general pattern of loss of gate receipts" through voluntary experiments with the lifting of local blackouts.<sup>61</sup> The NFL also expressed the fear that professional football would be damaged by overexposure on television and would become a "studio sport", a game played before the television cameras only.<sup>62</sup>

Although he said it was not a threat, Rozelle hinted that the league would consider limiting its television exposure to a weekly "Game of the Week" format, similar to the television policy of the other sports leagues. This would leave the individual teams to fend for themselves in telecasting the games other than the national broadcast. Rozelle felt that if that was the case, then . . .

most NFL cities would be deprived entirely of the away games of their home teams, and a considerable number of NFL clubs, particularly those with home territories representing the smaller television markets, would have only occasional access to television facilities at all.<sup>63</sup>

Rozelle also cited the NFL opinion that the nation's sportswriters supported the league. According to the league's press clipping service, 80% to 90% of America's sportswriters agreed with the NFL stance on blackouts simply because, " . . . they have a greater understanding of professional sports than is common within Congress or among the public generally."<sup>64</sup>

As Rozelle was giving his testimony to the subcommittee on September 6, 1973, the Senate passed Senator Pastore's antiblackout bill, S. 1841.<sup>65</sup> The overwhelming 76 to 6 vote in the Senate may have reinforced Rozelle's opinion that the passage of antiblackout legislation by the House was also likely. As his testimony neared an end, Rozelle asked the subcommittee,

indirectly, to vote out a bill that would be similar to the final version of the Pastore bill. The Commissioner asked that the bill cover only one season of each of the major sports, that the bill specify a 72-hour cutoff for the determination of a sellout (rather than 48 hours), and that the bill cover all television contracts, rather than just the professional sports' contracts with the national networks.<sup>66</sup> Those recommendations matched the bill that the Senate had just passed.<sup>67</sup> Representative Macdonald did not like the idea of just a one-year experiment, and had made that well-known during the hearings.<sup>68</sup> Macdonald also managed to elicit support for his bill over the Pastore bill from representatives of the National Hockey League and National Basketball Association. These leagues favored the Macdonald bill because it would have less effect upon them than S. 1841, for the Macdonald bill would not pertain to the majority of their telecasts, which are arranged through local contracts. These leagues did not actually favor any antiblackout legislation, but preferred H.R. 9553 over any other bills.<sup>69</sup>

Because the basic arguments for and against antiblackout legislation varied only slightly between 1972 and 1973, I have chosen not to commit entire sections to each argument. However, there was one major difference between the 1972 Senate hearings and the 1973 House hearings. That was the emphasis placed on pay cable (a system charging a per-program or per-channel fee) and the alleged NFL interest in the pay cable market. There was a great deal of interest in the press and among members of the subcommittee about NFL pay cable plans.

#### Sports Blackouts and Pay TV

Robert J. Samuelson, writing in the Washington Post, claimed to know the answer to the question, "Why is the NFL against antiblackout legislation?" According to Samuelson, it wasn't because of a potential drop in ticket sales

or a potential rise in no-shows, "It's the Great Unmentionable of American sports and media: Pay TV."<sup>70</sup>

He felt that pay TV was the only television opportunity available to the League that could make a lot of money in a short period of time. In this instance, "pay TV" referred to a paid-for extra channel on a cable system, such as Home Box Office or Showtime. Television rights payments and ticket prices increase slowly, while pay TV could, in essence, be an "extension of the stadium."<sup>71</sup> Naturally, such an extension would be rendered valueless if a "free" telecast coincided with a "pay" telecast of the same event. It seems only logical to assume that the consumer would view the free telecast. Samuelson maintained that,

. . . cable TV and Pay TV will clearly have to capitalize on America's sports mania . . . . In New York, home games of the hockey Rangers and basketball Knicks are already offered on regular cable TV to attract subscribers. In the future, popular games probably won't come so cheaply; they'll be limited to pay TV.<sup>72</sup>

In 1973, Federal Communications Commission antisiphoning rules read, in part,

Sports events shall not be cablecast which have been televised live on a nonsubscription, regular basis in the community during the two (2) years preceding their proposed cablecast.<sup>73</sup>

Because of these rules, home NFL football games were thought to be prime possibilities for pay cable. FCC Chairman Dean Burch agreed that home games, because they had not been locally telecast in the preceding two years, would be available for local cablecasting.<sup>74</sup>

Two members of the subcommittee, Chairman Torbert Macdonald and Rep. Lionel Van Deerlin (D.-Ca.), were very concerned about sports and pay TV, and questioned most of the witnesses about the subject (Van Deerlin is also a former chairman of the House Communications Subcommittee.) According to Van Deerlin,

. . . one of the most poorly kept secrets in this whole (blackout) question is the desire of professional football to get onto wired television for pay as fast as possible.<sup>75</sup>

And Macdonald even expressed the fear that sports would go completely to pay systems, leaving regular television broadcasting behind.<sup>76</sup>

Most of the witnesses felt that if an antiblackout bill should pass, the NFL would lose home games as a pay TV possibility, because of the two-year rule. Naturally, for this reason the most avid supporters of anti-blackout rules were the television networks. During the hearings, John Schneider, CBS Broadcast Group president; Everett Erlick, senior Vice President and general counsel of ABC; and Carl Lindemann, Jr., Vice President, Sports, NBC appeared to support the bills. National Association of Broadcasters president Vincent Wasilewski also testified in favor of the antiblackout bills.

Both Schneider and Lindemann supported the language of Macdonald's bill, which they felt would thwart any NFL interest in moving into pay TV.<sup>77</sup> Erlick also liked H.R. 9553, but suggested modifying the bill to prohibit cable TV from carrying a local game unless it was also on "free" television.<sup>78</sup> The network representatives warned the subcommittee that a pay system on a national scale could outbid the networks for the rights to sporting events.<sup>79</sup> In fact, most of the testimony from the three networks consisted of objections to any kind of cable TV intrusion into the networks' sports "territory." Macdonald noticed this and, in the case of Lindemann's testimony, said, "it seems to me that your testimony is more interested in not seeing pay-TV than having no blackouts."<sup>80</sup>

There was conflicting testimony from Schneider and Lindemann on a part of the NFL television contract with CBS and NBC that read:

Any changes in past practice regarding member club blackout of home territories where games are played, forced or otherwise, will result in good faith negotiation of financial terms between the league and the networks. During the terms of the agreement, should the league make any change in local television policy, such change, if any, will be on an experimental basis only and will also result in good faith negotiation of financial terms.<sup>81</sup>

Schneider interpreted the clause this way:

The NFL insisted for the first time, on a nonnegotiable basis, that it must be given the right to take the blacked-out games to pay cable.<sup>82</sup>

When Macdonald took issue with his interpretation, Schneider flatly stated that he knew that such action was the "intent" of the league, and that Pete Rozelle ". . . was under pressure from . . . certain team owners who had cable interests . . ." to move the games to cable.<sup>83</sup>

But the same clause in the contract with NBC brought about this exchange between Lindemann and Macdonald.

MR. LINDEMANN. There was some reference to it [pay TV], but always with the understanding that this language [in the contract] would clearly allow experimentation if they [NFL] wanted it. There was no desire on their part as a league to experiment during this coming 4-year period.

MR. MACDONALD. In other words, you felt that pay-TV was a dead issue for at least 4 years?

MR. LINDEMANN. I really do.<sup>84</sup>

NAB president Wasilewski gave his support to Macdonald's antiblackout bill, and presented the broadcasters organization's view that if an event was ". . . to be shown in a TV market area in any fashion," then the event should have been available for regular broadcast in the area.<sup>85</sup> Wasilewski came under fire from Macdonald concerning a full-page advertisement that had appeared in that morning's (August 1, 1973) Washington Post. The ad featured a picture of a man looking over a bill from "Pay Television Incorporated." On the bill were various sporting events and movies, along with a dollar amount, supposedly the charge for each of the programs. Underneath the picture, in large script, was the question, "Family spend

too much on TV last month?"<sup>86</sup> The copy in the ad, paid for by the NAB, included this statement . . .

Pay-TV operators are now planning to buy the exclusive rights to present sports like football, baseball, basketball and all the rest, and movies and popular entertainment shows--things that you get on free TV right now--and convert your TV set to a box office for themselves.

. . . We (NAB) believe the FCC should not weaken the rules to favor pay-TV; it should strengthen them. We believe Congress should step in, if necessary.<sup>87</sup>

Macdonald labeled the ad, "Scare tactics," and "a little misleading." He told Wasilewski, "I don't think the Congress is going to sit still to let pay-TV take over the sports of the country."<sup>88</sup> Wasilewski tried to convince Macdonald that the advertisement was " . . . coincidental . . . it had no connection with these hearings whatsoever . . ."<sup>89</sup> And the representative of the NAB, the group that is working hard for the de-regulation of broadcasting, told the subcommittee that, "If pay-TV comes, we think it should be a conscious political determination by a regulatory body or by this Congress."<sup>90</sup>

While broadcasting interests were adamant on not allowing pay TV to "siphon" sports events away from regular television, the sports interests, for the most part, contended that they were not looking to pay TV as an immediate alternative. NHL Vice President Don Ruck said that that league had "no intention" of taking games off of regular television in order to telecast them on a subscription basis.<sup>91</sup>

Our thinking has not been toward the pay cable end of it. Our problem has been really in trying to boost our network television ratings . . .<sup>92</sup>

National Basketball Association Commissioner Walter Kennedy also told the subcommittee that the league had no intentions of " . . . entering into leaguewide pay-TV or cable-TV (contracts)."<sup>93</sup> Baseball Commissioner Bowie Kuhn stated that his office had not had any negotiations concerning cable or pay television, but were leaving their "options open."<sup>94</sup>

Pete Rozelle denied that the NFL had plans to shift any of their football games onto a pay system. Concerning CBS' complaint about the NFL television contract, Rozelle defended the league's interest in retaining the right to experiment with other forms of television, saying that future television patterns were uncertain. If pay television were to become the dominant source of TV entertainment during the term of the contract, the NFL at least wanted to be able to experiment with it.<sup>95</sup> Rozelle also testified that he was not under pressure from owners regarding cable TV, and that he had not, as had been implied by Schneider, threatened giving CBS' contract to ABC.<sup>96</sup> Rozelle told the subcommittee,

We (NFL) would be insane to try to take everything off free television and put (it) on pay television, after a pattern of free television (has existed) since the 1950's.<sup>97</sup>

Macdonald then told the subcommittee that a representative of CBS had called him to report that Schneider's testimony had been in error regarding the NFL contract negotiations.<sup>98</sup>

What was the result of all of the concern and testimony on pay TV? Nothing substantial. It showed that the television networks were, perhaps, somewhat paranoid about the issue. They seemed to have a great deal of fear that the sports leagues were going to abandon them and take their business to pay TV systems, and were attempting to get Congress to legislatively "close the door" on any such occurrence. The NAB and the networks appeared to be as afraid of pay TV as the NFL was of potential antiblackout legislation. In the bill that was voted out of committee there was no change in language that would insure against any sport's defection to pay TV. However, Representative Macdonald did pledge to hold separate hearings on pay TV.<sup>99</sup>

#### Drafting and Passage of P.L. 93-107

The House Subcommittee hearings concluded on Friday, September 7, 1973. Over the weekend, Macdonald drafted the bill that he would recommend to the

subcommittee the following Monday. Macdonald made one change that was asked for by the National Football League. He increased the time limit for determining a sellout from 48 hours to 72 hours prior to the time of the game. The bill would be permanent, and would be an amendment to the Communications Act. Therefore, the enforcement of the bill would be by the FCC. The bill would also require the Commission to submit a yearly report to the House and Senate Commerce Committees on the effects of the law. Macdonald's recommended bill also stipulated that sale of rights to local stations be on "reasonable terms," and it included a clause indicating that failure to make available a sold-out home game could lead "any interested person" to file for a U.S. District Court injunction. Finally, the bill would cover only the network contracts of the professional football, baseball, basketball, and hockey leagues.<sup>100</sup>

This was the bill that was recommended by Macdonald to the Communications Subcommittee's executive session on Monday, September 10. It took the Subcommittee less than 15 minutes to pass the bill, with one "no" vote.<sup>101</sup> That vote came from Representative James Collins (R.-Tex), who had tried unsuccessfully to amend the bill in order to limit it to a one year experiment and extend the sellout time limit to two weeks before the date of the game.<sup>102</sup>

On the following day, Tuesday, September 11, it took less than 20 minutes for the full House Commerce Committee to pass the bill. Collins again was the lone dissenter after attempting to pass the same amendments.<sup>103</sup> The Committee planned to take the bill before the House Rules Committee (the last step before full House consideration) the morning of Thursday, September 13 " . . . with the hope of having the bill ready for the House to consider on the same day."<sup>104</sup> The Committee had to act swiftly to make sure that the Rules Committee would consider the bill on Thursday. A report on H.R. 9553 had to be filed by midnight Tuesday and, as a result, the report was described

as being " . . . rather brief and dealt primarily with the background of sports broadcasting practices."<sup>105</sup>

What was the reason for all of this hurry on the part of the House? The professional football season was to begin on Sunday, September 16, and Congress wanted to pass some antiblackout legislation before the beginning of the season. However, Harry Shooshan cites an alternate explanation as to why the House Commerce Committee acted so quickly on the measure.

In light of increased concern over the energy crisis, there was mounting pressure on Representative Macdonald to resume consideration of his legislation pertaining to the mandatory allocation of petroleum products, which was also ready for markup. The Committee could not afford to appear preoccupied with sports blackouts in the face of growing public concern over shortages of gasoline and heating oil. In fact, while Chairman Staggers was before the Rules Committee handling the antiblackout bill, Representative Macdonald was chairing a markup session of the full committee on the allocation bill.<sup>106</sup>

A unique compromise is one of the interesting features of the antiblackout law. The Senate had passed S. 1841, Senator Pastore's bill, on September 6. That bill was radically different from the House bill under consideration, H.R. 9553. Pastore's bill covered all television contracts, rather than just network/professional sports agreements, and was limited to a one-year experiment. Senate Communications Subcommittee Chairman Pastore and House Communications Subcommittee Chairman Macdonald worked out the compromise over the phone Thursday afternoon, September 13, before the House considered the bill on the floor.<sup>107</sup> Such a compromise avoided a conference committee meeting between House and Senate, which would have delayed passage of any legislation until after the football season had started. It wasn't that much of a compromise from the House standpoint. Pastore agreed to the Macdonald bill on all points except the permanent feature of the legislation. Pastore still wanted to limit the action to one-year, then determine whether or not the law should be continued. His determination on this point has been attributed to very strong support for experimentation in the Senate.<sup>108</sup> But

Macdonald wanted more than one year, and Pastore agreed to a bill that would stand until December 31, 1975, a little over two years, but encompassing three football seasons. It was determined that the House would replace the majority of S. 1841 with the bill that would pass the house (H.R. 9553, as amended), then return the bill to the Senate for its concurrence.<sup>109</sup> This, of course, was contingent upon passage of the House bill.

The House began floor action on the bill at four o'clock September 13. Both Representative Staggers and Representative Macdonald tried to hurry the measure through that chamber, because the Senate had been busying itself with other affairs while waiting for the House to take action since one o'clock that afternoon.<sup>110</sup> Despite Macdonald's warning that the Senate was going to " . . . close up shop unless we get this bill completed,"<sup>111</sup> the House spent over an hour discussing the legislation. Much of the debate was simply putting into the record the various arguments, pro and con, about the bill, with no new information being presented. The full House then went through the process of amending the bill to meet the Commerce Committee's recommendations. Each amendment was accepted with little debate. Then Representative Macdonald proposed another amendment that would protect high school and college football games from the telecasts allowed in H.R. 9553.<sup>112</sup> This was added to the bill to make it conform with P.L. 87-331 (the 1961 antitrust exemption), which stipulates that no professional football telecast may take place after six o'clock Friday and all day Saturday during the high school or college football seasons.<sup>113</sup> It was also agreed to by the House.<sup>114</sup> Representative Charles Carney (D.-Ohio) was refused in his attempt to limit, through amendment, the area that could be blacked out to 50 miles, rather than the 75-mile radius generally used by the NFL and other leagues.<sup>115</sup> This business out of the way, the House convincingly passed H.R. 9553, 336 to 37,<sup>116</sup> then substituted the text of H.R. 9553 for the text of S. 1841,

passed that, and sent it back to the Senate.<sup>117</sup>

The Senate, meanwhile, had not "closed up shop," but had waited through several recesses before being called back at 5:41 P.M.<sup>118</sup> Although some among the Senate leadership were "disappointed" in the three-year lifespan of the bill, there was fast action on it. Although there was no vote recorded, the Senate did agree to the new measure, thereby sending it to President Nixon for his signature.<sup>119</sup>

It had taken the span of four days, Monday through Thursday, for the House bill to be formulated, passed, and reconciled with the Senate version. One day later, September 14, 1973, P.L. 93-107 was signed by President Nixon.<sup>120</sup> Senator Marlowe Cook had this to say about the speed with which the measure moved through the legislative process:

Regardless of the issue involved--and this is not an extremely important national issue in our list of priorities among other national issues--I think it does show that Congress . . . can in fact move expeditiously.<sup>121</sup>

Representative Jack Kemp (R.-N.Y.), a former NFL quarterback and an opponent of the antiblackout bill, was a bit more caustic about the speed:

I believe in retrospect that only the Gulf of Tonkin resolution moved equally fast.<sup>122</sup>

Living up to an earlier promise, Pete Rozelle announced, even before the President signed the law, that the NFL was lifting local blackouts for those games sold out 72 hours before game-time. He warned again of the danger that professional football could become a "studio show" as a result of the legislation.<sup>123</sup> The NFL season began the following Sunday, and eight games were locally telecast because of the new law.<sup>124</sup>

## NOTES

- <sup>1</sup>Shooshan, Syracuse Law Review, 25, p. 721.
- <sup>2</sup>Ibid.
- <sup>3</sup>"Pro turns amateur," Broadcasting, January 1, 1973, p. 82.
- <sup>4</sup>119 Cong. Rec., 16058 (remarks of Senator Pastore).
- <sup>5</sup>Shooshan, Syracuse Law Review, 25, p. 722.
- <sup>6</sup>Ibid.
- <sup>7</sup>Ibid.
- <sup>8</sup>119 Cong. Rec., 16058 (remarks of Senator Pastore).
- 9S. 1841, 93rd Cong., 1st Sess. (1973).
- <sup>10</sup>Philip R. Hochberg, "Congress Kicks a Field Goal: The Legislative Attack in the 93rd Congress on Sports Broadcasting Practices," Federal Communications Bar Journal, 27, p. 41.
- <sup>11</sup>Ibid.
- <sup>12</sup>Shooshan, Syracuse Law Review, 25, p. 723.
- <sup>13</sup>119 Cong. Rec., 16058 (remarks of Senator Pastore).
- <sup>14</sup>"Most NFL Attendees Favor TV," Washington Post, May 5, 1973, Sec. D, p. 6.
- <sup>15</sup>Ibid.
- <sup>16</sup>"Redskins TV Again Curtailed," Washington Post, July 2, 1973, Sec. D, p. 1.
- <sup>17</sup>Ibid.
- <sup>18</sup>Tom Bennet, David Boss, Jim Campbell, Seymour Siwoff, Rick Smith and John Wiebusch, eds., The NFL's Official Encyclopedia History of Professional Football, (New York: Macmillian Publishing Co., Inc., 1977), p. 232.
- <sup>19</sup>"NFL's TV Czar Firm on Redskin Blackout," Washington Post, July 6, 1973, Sec. D, p. 1.
- <sup>20</sup>"NFL 'Arrogance' Typical," Washington Post, July 6, 1973, Sec. D, p. 1.
- <sup>21</sup>Shooshan, Syracuse Law Review, 25, p. 724.
- <sup>22</sup>"Antiblackout bill goes to Senate," Broadcasting, July 23, 1973, p. 33.

- <sup>23</sup>Shooshan, Syracuse Law Review, 24, p. 724.
- <sup>24</sup>H.R. 9188, 93rd Cong., 1st Sess. (1973).
- <sup>25</sup>H.R. 9420, 93rd Cong., 1st Sess. (1973).
- <sup>26</sup>Hochberg, Federal Communications Bar Journal, 27, p. 60.
- <sup>27</sup>H.R. 9586, H.R. 9587, H.R. 9619, H.R. 9620, H.R. 9621, H.R. 9661, H.R. 9669, H.R. 9788, H.R. 9798, and H.R. 10170, 93rd Cong., 1st Sess. (1973).
- <sup>28</sup>Hochberg, Federal Communications Bar Journal, 27, p. 60.
- <sup>29</sup>H.R. 9536, 93rd Cong., 1st Sess. (1973).
- <sup>30</sup>Hochberg, Federal Communications Bar Journal, 27, p. 61.
- <sup>31</sup>H.R. 9644, 93rd Cong., 1st Sess. (1973).
- <sup>32</sup>Evaluation of the Necessity for Television Blackouts of Professional Sporting Events, Report by the Special Subcommittee on Investigations of the Committee on Interstate and Foreign Commerce, House of Representatives, 93rd Cong., 1st Sess., (Washington: U.S. Government Printing Office, 1973), p. III. (Hereafter referred to as 1973 House Evaluation)
- <sup>33</sup>Ibid.
- <sup>34</sup>Shooshan, Syracuse Law Review, 25, p. 725.
- <sup>35</sup>Hochberg, Federal Communications Bar Journal, 27, p. 63.
- <sup>36</sup>H.R. 9553, 93rd Cong., 1st Sess. (1973).
- <sup>37</sup>119 Cong. Rec., 26004 (remarks of Rep. Macdonald).
- <sup>38</sup>Ibid.
- <sup>39</sup>Ibid., 26005.
- <sup>40</sup>Shooshan, Syracuse Law Review, 25, p. 726.
- <sup>41</sup>119 Cong. Rec., 26005 (remarks of Rep. Macdonald).
- <sup>42</sup>"Wrong way out," Broadcasting, July 30, 1973, p. 66.
- <sup>43</sup>Ibid.
- <sup>44</sup>Ibid.
- <sup>45</sup>Professional Sports Blackouts, Hearings before the Subcommittee on Communications and Power of the Committee on Interstate and Foreign Commerce, House of Representatives, 93rd Cong., 1st Sess., on H.R. 9536, H.R. 9644, H.R. 9553, and H.R. 9188, (Washington: U.S. Government Printing Office, 1973), p. 78. (Hereafter referred to as 1973 House Hearings)

- 46 "This Morning," Washington Post, July 31, 1973, Sec. D, p. 1.
- 47 1973 House Hearings, p. 215.
- 48 Ibid., pp. 215, 268.
- 49 See Text accompanying notes 32 and 33.
- 50 1973 House Evaluation, p. 70.
- 51 Ibid., p. 72.
- 52 Ibid., p. 73.
- 53 Ibid., p. 134.
- 54 1973 House Hearings, pp. 105, 186.
- 55 Ibid., p. 13.
- 56 1972 Senate Hearings, p. 64.
- 57 1973 House Hearings, p. 164.
- 58 Ibid., pp. 179-180.
- 59 Ibid., p. 191-192.
- 60 Ibid., p. 242.
- 61 Ibid., p. 25.
- 62 Ibid., p. 191.
- 63 Ibid., p. 189.
- 64 Ibid., p. 193.
- 65 119 Cong. Rec., 28729,
- 66 1973 House Hearings, p. 244, The Macdonald bill (H.R. 9553) covered only league/network contracts.
- 67 119 Cong. Rec., 28729.
- 68 1973 House Hearings, pp. 23-24.
- 69 Ibid., pp. 26, 130.
- 70 Robert J. Samuelson, "Blackout Now: Pay TV Later?" Washington Post, July 22, 1973, Sec. C, p. 1.
- 71 Ibid., Sec. C. p. 3.
- 72 Ibid.

<sup>73</sup>1973 House Hearings, p. 257. By 1974, the FCC had expanded the time limit to five years.

<sup>74</sup>*Ibid.*, p. 70.

<sup>75</sup>*Ibid.*, p. 69.

<sup>76</sup>*Ibid.*, p. 71.

<sup>77</sup>*Ibid.*, pp. 78, 107.

<sup>78</sup>*Ibid.*, p. 96.

<sup>79</sup>*Ibid.*, pp. 90, 108.

<sup>80</sup>*Ibid.*, p. 108.

<sup>81</sup>*Ibid.*, p. 81.

<sup>82</sup>*Ibid.*, p. 80.

<sup>83</sup>*Ibid.*, pp. 81-82.

<sup>84</sup>*Ibid.*, pp. 110

<sup>85</sup>*Ibid.*, p. 132.

<sup>86</sup>Washington Post, August 1, 1973, Sec. A, p. 28.

<sup>87</sup>*Ibid.*

<sup>88</sup>1973 House Hearings, p. 133.

<sup>89</sup>*Ibid.*

<sup>90</sup>*Ibid.*, p. 134.

<sup>91</sup>*Ibid.*, p. 30.

<sup>92</sup>*Ibid.*, p. 36.

<sup>93</sup>*Ibid.*, p. 126.

<sup>94</sup>*Ibid.*, pp. 166-167.

<sup>95</sup>*Ibid.*, p. 195.

<sup>96</sup>*Ibid.*, p. 218.

<sup>97</sup>*Ibid.*, p. 244.

<sup>98</sup>*Ibid.*, p. 218.

<sup>99</sup>*Ibid.*

<sup>100</sup>Shooshan, Syracuse Law Review, 25, pp. 738-739; and Hochberg, Federal Communications Bar Journal, 27, pp. 69-70.

<sup>101</sup>"House Speeding to Blackout Ban," Washington Post, September 11, 1973, Sec. D, p. 1.

<sup>102</sup>Ibid.

<sup>103</sup>"House Geared Up to Lift TV Curtain for Opener," Washington Post, September 12, 1973, Sec. E, p. 1.

<sup>104</sup>Shooshan, Syracuse Law Review, 25, pp. 739-740.

<sup>105</sup>Ibid., p. 740.

<sup>106</sup>Ibid.

<sup>107</sup>Ibid., p. 741.

<sup>108</sup>Ibid.

<sup>109</sup>119 Cong. Rec., 29713.

<sup>110</sup>Ibid., 29665, 29717, and 29720.

<sup>111</sup>Ibid., 29720.

<sup>112</sup>Ibid., 29727.

<sup>113</sup>75 Stat. 732.

<sup>114</sup>119 Cong. Rec., 29727.

<sup>115</sup>Ibid., 29732.

<sup>116</sup>Ibid., 29734.

<sup>117</sup>Ibid., 29735.

<sup>118</sup>Ibid., 29664.

<sup>119</sup>Ibid., 29666.

<sup>120</sup>Hochberg, Federal Communications Bar Journal, 27, p. 72.

<sup>121</sup>119 Cong. Rec., 29665-29666.

<sup>122</sup>Ibid., 29714.

<sup>123</sup>"Congress Clears Blackout Ban; NFL Home Games Go on TV," Washington Post, September 14, 1973, Sec. A, p. 1.

<sup>124</sup>"Congress lifts curtain on sports blackouts," Broadcasting, September 17, 1973, p. 6.

## CHAPTER IV THE EFFECTS OF THE ANTIBLACKOUT LAW

When speaking of the effects of the antiblackout law on sports in this chapter, discussion will be limited primarily to the National Football League. Of course, this law covered the four major professional sports but, as was intended, the NFL was the most affected. Because the law covered only the leagues' pooled-rights contracts with the networks, there were a limited number of professional baseball, basketball, and hockey league games that were covered by the law. Therefore, there was little opportunity for the law to affect ticket sales, attendance, and concession sales for those leagues. Major League Baseball, for example, was so little affected by the law that by 1975, when new legislation was being considered, Commissioner Bowie Kuhn actually supported the legislation.<sup>1</sup> Representatives of the National Basketball Association and National Hockey League opposed making the law permanent, but admitted that there had been little, if any negative effects upon their leagues.<sup>2</sup>

### Initial Reaction

During the first weekend of the 1973 professional football season, the NFL reported that over 50,000 ticket holders failed to show up for the thirteen games.<sup>3</sup> Commissioner Rozelle took the opportunity to warn that the antiblackout law " . . . could be the biggest threat in the history of pro football."<sup>4</sup> Senator Pastore felt that local telecasts were not the source of that weekend's no-shows. It was his opinion that ticket scalpers (people who buy up large blocks of tickets for resale at higher prices)

were probably left with the majority of those tickets. Pastore said, "People that buy tickets like to see the game live. They didn't stay home unless they had to."<sup>5</sup> At any rate, it was too soon to tell which side was correct.

Sports Illustrated reported that:

No sooner had Congress acted than the nation's football-watching habits began to change. The want-ad columns of the Kansas City Star blossomed with offers to sell Chiefs tickets rendered suddenly less desirable by the prospect of home TV, while a smaller number of advertisers, sensing a chance to finally get their hands on tickets, were offering to buy<sup>6</sup>

Philadelphia Eagle's owner Leonard Tose reportedly tried to avoid a local telecast of a home game with the Washington Redskins by offering for sale almost 400 seats with a terrible view of the playing field. He hoped that the tickets would not sell, and the blackout would be preserved. But a local businessman tried to buy all of those tickets to get the game on local television. Because the Eagles refused to sell the tickets (they did not want to "be a party to some cheap publicity stunt"), the club admitted that the game was a sellout, and it was locally telecast.<sup>7</sup>

It was also felt that the fans who had faithfully bought tickets year after year were feeling a sense of "betrayal" by those viewing at home. A sign appeared at a Pittsburgh Steeler home game that read, "WELCOME TV FREeloaders."<sup>8</sup>

#### The First Season: 1973

For its first report on the effect of the antiblackout law, the FCC had some difficulty in dealing with the NFL. The Commission reported that the clubs "were initially reluctant to fill in forms compiling data on no-shows, concessions, etc."<sup>9</sup> The league also did not provide the Commission with the financial information for which it had asked, such as a profit and loss statement from each team.<sup>10</sup> Also, as the Commission reported, it

had not yet established a "working relationship with the NFL, "because of the newness of the law."<sup>11</sup>

But the Commission was able to make some conclusions about the effect of the law. During the first season covered by the law, 109 of 182 regular season games were telecast locally, because of a sellout situation.<sup>12</sup> During the 1972 season, the NFL reported that 100 games were sold out.<sup>13</sup> One NFL prediction came true in 1973. There was a "dramatic rise" in no-shows reported by the league. Two teams, Dallas and San Diego, had not kept no-show figures for the 1972 season, therefore there was no way to tell if no-shows increased or decreased in 1973. Even with those two teams' no-shows subtracted from the 1973 total, the league's no-shows increased 54.6 percent, from 624,686 in 1972 to 967,362 in 1974.<sup>14</sup> Miami experienced the greatest increase--485 percent--while both St. Louis and Denver reported 50 percent declines in the number of no-shows.

But the FCC reported that only 57,570 more fans stayed away from NFL games in 1973 than in 1972. This figure was arrived at by subtracting each season's no-shows from the total paid attendance (which reached an all-time high in 1973), then noting the difference in actual attendance for both years.<sup>16</sup> The Commission concluded that, "Since more people than ever before bought tickets for football games, it would appear that the NFL enjoyed its best season in 1973."<sup>17</sup> It should be noted, however, that season ticket sales had been concluded by the time that the antiblackout law was passed. The league still maintained that no-shows would soon become "no-buys," thus having a great effect on the league.<sup>18</sup>

The league also claimed that the sale of "PRO," the league's official program magazine, had dropped, but provided only partial information on sales.<sup>19</sup> The Commission also determined that, "the maximum possible loss to concessionaires would be less than \$120,000 shared among concessionaires

operating at the 29 stadia."<sup>20</sup>

The other NFL prediction that came true was a decrease in the value of radio rights, even while pro football's national television ratings did not increase.<sup>21</sup> Radio rights holders reported ratings decreases from 34 percent to 85 percent, and many asked the football teams to rebate some of the rights money that they had paid.<sup>22</sup> The Commission concluded:

Radio ratings were badly hurt by the (antiblackout) law, and radio could lose its importance in certain areas in the broadcasting of home professional football games.<sup>23</sup>

But the Commission also concluded that the effect upon the league's members had been minimal, compared to the "substantial benefit" to the public of 109 local telecasts.<sup>24</sup>

NFL Commissioner Rozelle later charged that the first report was "laden with inaccuracies," and that:

the Report seems . . . to represent more of an effort to rationalize and to minimize the detrimental effects of P.L. 93-107 on the NFL clubs than an objective appraisal of the effects of the new law. The NFL can only hope that . . . the Congress will be provided with a far more balanced assessment of those effects on the NFL, and of the NFL's cooperation with the FCC and with the terms of the law itself, than the Commission has produced thus far.<sup>25</sup>

#### The Second Season: 1974

If Rozelle was hoping that the Commission would agree that the law was having an adverse effect on the league in their second report, he was probably disappointed. The Commission again reported that the law was not turning professional football into a "studio sport."<sup>26</sup> The data indicated, however, that there were fewer games telecast because of the law in 1974 (down to 86 from 109 in 1973--see table 2),<sup>27</sup> there was another 10 percent increase in no-shows (from 1,002,990 in 1973 to 1,124,162 in 1974)<sup>28</sup>, season ticket sales declined six percent from 1973 to 1974<sup>29</sup>, and that \$182,940 was rebated to radio stations from nine teams, while other teams were reportedly renegotiating their radio contracts.<sup>30</sup>

TABLE 2  
NFL REGULAR SEASON GAMES TELECAST  
PURSUANT TO P.L. 93-107,  
1973-1977

Year	1973	1974	1975	1976	1977
No. of games televised	109	86	75	86	86
Total No. of games	182	182	182	196 <sup>1</sup>	196
Percent of games locally televised	60	47	41	44	44

<sup>1</sup>Two teams added to the League in 1976--Tampa Bay and Seattle.

SOURCE: Fifth FCC Report, p. 10, Table 1.

The Commission reported that there were other factors present during the 1974 season which could have caused the results mentioned above. It cited a "deterioration in the state of the U.S. economy," which was accompanied by "double-digit inflation which affected the operation" of the NFL. Rising gasoline costs and shortages may have hampered some fans' ability to go to the games. The NFL Players Association went on strike during the preseason which, "The NFL claims . . . ruined the pre-season schedule, caused some disenchantment among the fans, and led to some financial losses." Finally there had been competition for both fans and players from the World Football League, which began play during the 1974 season.<sup>31</sup>

A scientific method of determining possible effects was used by the FCC to report on the 1974 season. The Commission staff examined ten separate factors believed to contribute to non-attendance by fans at professional football games. Using regression analysis, it was determined that precipitation

was the most important factor, causing 46 percent of the increase in no-shows over 1973. By contrast, the same analysis showed only 2.2 percent were caused by lifting blackouts.<sup>32</sup> The Commission used the same kind of analysis on factors relating to purchase of season tickets for the 1974 season. It was discovered that the number of games televised locally "had no statistically significant effect" on the change in season ticket sales.<sup>33</sup>

#### New Legislation: 1975-76

The 1975 football season began with some uncertainty. The antiblackout law was to expire on December 31, 1975, but there was still no extension of the law in the works. Senator Pastore and Representative Macdonald, however, made sure that the law would not expire peacefully. Macdonald introduced H.R. 9566 on September 11, 1975, and planned four days of hearings to begin September 22.<sup>34</sup> The bill was practically identical to P.L. 93-107, with the exception of treating post-season games differently from regular season games. The playoffs were to be televised locally if the games were sold out 24 hours prior to game-time, rather than 72 hours. Macdonald's new antiblackout measure would make the law permanent as well.<sup>35</sup> After just one day of hearings on the bill, Macdonald was hospitalized with a bad case of bronchitis, which postponed further hearings until October 29, 1975.<sup>36</sup> While those hearings were stalled, Senator Pastore and Senator Beall introduced S. 2554 on October 22, 1975.<sup>37</sup> This bill would deal with post-season games in a manner similar to H.R. 9566, but would only extend the antiblackout law for three years.<sup>38</sup>

During the House hearings on H.R. 9566, there was a great deal of concern about the NFL's ability to black out an area generally 75 miles in diameter around the home city. The stations actually blacked out were those that broadcast into that 75 mile zone, therefore the blackout actually

reached much farther than just 75 miles. Some stations over 120 miles from the football games were regularly blacked out.<sup>39</sup> Representative Louis Frey (R.-Fla.) made this statement:

Frankly, it looks to me as though we, as a committee, have little choice except maybe to outline exactly what the limit should be. It is obvious . . . that no voluntary limitation is going to be followed and I would hope that . . . we can come up with a particular amendment to this bill.<sup>40</sup>

That is exactly what the subcommittee did on December 9, 1975, when they approved what became known as the Frey amendment.<sup>41</sup> That amendment allowed a blackout to extend only to stations located within a 75-mile radius of the ball park.

Meanwhile, Senate hearings on S. 2554 were held for one day, November 21, 1975. Only three witnesses testified, and the hearing took only 95 minutes.<sup>42</sup> Soon, the full Commerce Committee voted out the Pastore bill as it had been written. Floor debate in the Senate was very brief, and S. 2554 was passed on a voice vote on December 8, 1975.<sup>43</sup>

After having accepted the Frey amendment, the House Subcommittee drafted a new bill (H.R. 11070) or, as Representative Macdonald phrased it, a "clean" bill to encompass the amendment.<sup>44</sup> This bill passed through the full Commerce Committee on the 11th of December.<sup>45</sup> On December 15, one week after the Senate had passed its antiblackout bill, the House voted for H.R. 11070 overwhelmingly, 363 to 40.<sup>46</sup> Action on the bills had again been quick in each house, but final passage was stalled. The Senate, unlike 1973, did not like the House version enough to accept it. There would have to be a conference on the antiblackout bill, and it would have to come up with an acceptable measure before the Congress recessed for Christmas, if the House and Senate wanted the antiblackout law to continue past December 31, 1975.

The Conference Committee on antiblackout could not come to an agreement

in December, 1975. Neither side would compromise on the differences in the two bills. The Senate did not want to make the law permanent, opting instead for a three year extension. Also, the House would not abandon the Frey amendment, while the Senators thought that it would effectively open up most blackout areas to telecasts of the game from stations just outside the 75-mile line.<sup>47</sup> As a result, the Antiblackout Law of 1973 expired. However, new legislation still had a chance of passage, if the two chambers could come to an agreement after the Christmas break.

Conferees on the subject did not meet again until May 19, 1976. Before that, ill health had prompted Representative Macdonald to resign his post as Chairman of the House Communications Subcommittee. He was replaced by Lionel Van Deerlin.<sup>48</sup> Trouble between the Senate and the House over the antiblackout bill flared in late April, during what was described as a "shouting duel back and forth across Capitol Hill . . ."<sup>49</sup> It started when Pastore told the Senate that an "impasse" had been reached in conference, " . . . but that he had been assured by National Football League Commissioner Pete Rozelle that the NFL would live up to the spirit of the former law for the next two seasons."<sup>50</sup> Representatives Van Deerlin, Frey, and Macdonald replied to Pastore in a letter of April 28, questioning Pastore's motives for holding "private meetings" with the NFL.<sup>51</sup> They suggested that the Senator should not have accepted Rozelle's promise, and urged him to work for the passage of new legislation. But Pastore would not be convinced, and what really upset him was the fact that after he had received the letter, the House Subcommittee staff released it to the press, " . . . along with a statement which used the word 'deal' to refer to Mr. Pastore's agreement . . ." with Pete Rozelle.<sup>52</sup>

When the conferees finally got together, a final compromise was reached, and Pastore was allowed a forum from which to publicly criticize

the House Subcommittee staff for trying " . . . to make him look bad in the press . . ." <sup>53</sup> On the bill, however, both sides ended up making concessions. The Senators agreed to let the bill make the antiblackout law permanent, and they agreed to a one-year trial of the Frey amendment, with the stipulation that the blackout limit be raised to 90 miles, rather than the originally planned 75 miles. <sup>54</sup> It was reported that the NFL had wanted the limit extended to 125 miles. <sup>55</sup> Senator Pastore had requested another report on the effects of the law from the FCC in March, 1976, and the Senators on the Conference Committee suggested that they wait until that report had been received (it was due in June) to meet again to send the bill back to both houses. <sup>56</sup> The FCC report was on time, but:

. . . the House Committee on Interstate and Foreign Commerce received no word from the Senate Committee on Commerce as to their reasons for not filing the conference report or holding a second meeting to further discuss the issue. As a result, the bill died at the end of the 94th Congress. <sup>57</sup>

The reason for the death of the legislation appeared to be the Senate conferees' unhappiness with the Frey amendment. <sup>58</sup> Although they had approved a trial of the amendment, the Senators were apparently satisfied with Pete Rozelle's pledge to abide by the spirit of the former law for two more seasons. Actually, there was no reason to believe that Rozelle and the NFL would not live up to the pledge. The NFL had seen in 1973 how quickly the Congress could act to pass antiblackout legislation. If the league did not comply with the spirit of the law, the Senate and House could agree just as quickly on new legislation. Rozelle would probably rather comply with the old law than have the league's blackout territory statutorily limited. Meanwhile, the other professional sports leagues were under no obligation to follow the spirit of the law.

The third FCC report on the effects of the antiblackout law showed overall league decreases in games locally telecast, season ticket sales,

and no-shows.<sup>59</sup> During 1975, 75 games were locally telecast because of the law, compared with 86 games in 1974.<sup>60</sup> Season ticket sales dropped by 5.3 percent, while overall ticket sales dropped .3 percent. The 1974 decline in season ticket sales had been 6.1 percent, and the total ticket sales figure dropped 4.6 percent.<sup>61</sup> The number of no-shows fell to 8.6 percent of total ticket sales in 1975, down from 11 percent in 1974 (table 3).<sup>62</sup>

TABLE 3  
NFL TICKET SALES AND NO SHOWS  
FOR REGULAR SEASON GAMES  
1973-1977

Year	1973	1974	1975	1976 <sup>1</sup>	1977 <sup>1</sup>
Total season tickets sold	1,314,389	1,232,459	1,168,710	1,158,363	1,129,954
Percent change from previous season	+4.0	-6.2	-5.2	-0.9	-2.5
Total tickets sold	10,730,933	10,236,322	10,207,041	10,308,734	10,198,149
Percent change from previous season	+2.7	-4.6	-0.3	+1.0	-1.1
No. of no-shows	1,035,831	1,124,879	874,733	942,654	868,542
Percent change from previous year	+78.8	+8.6	-22.2	+7.8	-7.9
Percent of total paid attendance	9.7	11.0	8.6	8.5	8.5

<sup>1</sup>Tampa Bay and Seattle not included in 1976 and 1977 figures.  
SOURCE: Fifth FCC Report, p. 12, table 3.

Because of the NFL argument that the antiblackout law was the cause of the decrease in season ticket sales, the FCC conducted a statistical analysis of various factors involved with buying season tickets. Through this analysis, the Commission concluded that P.L. 93-107 was not a major factor in the decision not to buy a season ticket. The won-loss record compiled by the team during the previous season was seen as a much larger factor.

Contrary to the NFL's position on this issue, the results indicate that season ticket sales actually increased significantly when fans were able to see locally televised home games played during the preceding season.<sup>63</sup>

The Commission noted that the total live gate (tickets sold minus no-shows) was higher in 1975 than in 1974 or 73.<sup>64</sup> This could possibly be attributed to the fewer number of games locally telecast, which would lend support to the NFL argument that there would be more no-shows if games were locally telecast. However, the Commission found that:

In fact, there were fewer "no shows" for televised games than for games which were blacked out. On the average, . . . (7.1 percent) of all ticket holders failed to attend locally televised games, while . . . (9.6 percent of the ticket holders) chose not to attend blacked-out games.<sup>65</sup>

Again, the Commission cited weather factors as more important than local telecasts in the fan's decision not to attend a game.<sup>66</sup>

The report noted that radio ratings dropped when a game was locally telecast, and that some teams had paid rebates on rights fees to the local radio station. But the Commission concluded that any loss to the clubs would be made up through increased network television rights payments, and that the radio stations appeared to be doing well, financially. Therefore, " . . . the impact of P.L. 93-107 on radio revenues is of no great consequence."<sup>67</sup>

In an independent statistical analysis of the 1973, 1974, and 1975

football seasons, two researchers from Vanderbilt University agreed that the National Football League did not need to fear no-shows. John J. Siegfried and C. Elton Hinshaw discovered that bad weather, combined with the availability of a local telecast led " . . . to more no-shows than would have occurred if a game were not televised."<sup>68</sup> But live attendance was reduced by only one percent. Siegfried and Hinshaw concluded that:

The NFL's fear that the anti-blackout law would result in increasing no-shows is unfounded . . . We found no case in which the lifting of the blackout alone affected fans' decisions to attend the games. There is no connection between blackouts and no-shows.<sup>69</sup>

Using their findings as a base, Siegfried and Hinshaw urged Congress to " . . . extend P.L. 93-107 indefinitely . . ."<sup>70</sup>

#### Antiblackout: Recent History

After the NFL's decision to comply voluntarily with the spirit of the antiblackout law during the 1976 and 1977 seasons, and the failure of Congress to pass new legislation in 1976, there has been little activity in the antiblackout area. The Senate Communications Subcommittee requested two more annual reports from the FCC; one each for the 1976 and 1977 seasons. In requesting both reports, the Subcommittee was "certain" that new legislation would be considered in the 95th Congress.<sup>71</sup> However, it wasn't until Commissioner Rozelle, in March of 1978, hinted that the league would not continue to abide by the spirit of the law during the 1978 season,<sup>72</sup> that more antiblackout bills were drafted. Within a period of four days, four new bills were introduced.<sup>73</sup> The House Communications Subcommittee announced plans to hold hearings in April, 1978. It was at that time that Rozelle announced the league's plans to continue to follow the antiblackout law of 1973 through the 1979 season.<sup>74</sup> The House Subcommittee conducted a one-day hearing on antiblackout legislation, but there was no further action that session.<sup>75</sup>

The last two FCC reports on the effect of P.L. 93-107 were less avid in their support for the law, although still maintaining that any losses taken by the league in ticket or concession sales did " . . . not pose a significant threat to the financial vitality of professional football franchises."<sup>76</sup> The Commission also noted that concession losses to the league traceable to the law amounted to " . . . less than one-half of one percent . . ." of the total team revenues.<sup>77</sup>

The report stated:

Although costs (related to the law) incurred by the league are not serious, they are in fact quite real. Additionally, since the NFL is not being compensated for these losses, it is clear that Congress, in requiring NFL teams to locally televise games, has imposed a financial burden on selected franchises (those which have the most no-shows).<sup>78</sup>

After the first two years under the law, the number of games telecast and the number of season tickets sold stabilized at a lower level, while the number of no-shows stabilized at a higher level than occurred before the passage of P.L. 93-107. The Commission was able to conclude in 1978 that the antiblackout law " . . . may have reduced NFL revenues from lower gate receipts and concession revenues by as much as \$4.7 million per year."<sup>79</sup> However, the league more than likely made up for at least a portion of those losses when it renegotiated its network television contracts. The league reportedly received almost \$647 million from the networks over the period covering the 1977 through 1980 football seasons.<sup>80</sup> During the previous four-year contract, the league had received approximately \$240 million.<sup>81</sup> The price to the networks for carrying NFL football will probably rise again this year, because a new contract will have to be negotiated.

Since the fifth FCC report, the NFL has not been required to report to the Commission. However, as a general practice, the league still

abides by the spirit of the former law, and locally telecasts those games sold out 72 hours prior to game time.<sup>82</sup>

### Professional Sports and Pay TV

The concern by the television networks that pay television would take over local broadcasting of home games was a major reason why the networks supported the antiblackout law. It was felt that the telecasting of a home game on conventional TV would, because of FCC rules, bar those games from pay TV telecast. The FCC rules on subscription television stipulated that if a certain event had been broadcast locally, it could not be locally telecast on a subscription basis until five years after the date of broadcast. Recent court actions have eliminated this aspect of the antiblackout law. The U.S. Court of Appeals for the District of Columbia ruled on March 25, 1977<sup>83</sup> that the FCC had failed to "establish its jurisdiction" over pay TV. The Court ordered the FCC to delete the section in its rules covering pay TV. When the Supreme Court refused to hear the FCC's appeal on October 3, 1977, the Commission eliminated the subscription television rules, effective January 24, 1978. These rules also concerned feature films and advertising on pay TV.<sup>84</sup>

Because of the elimination of the FCC rules, pay TV operators have been given a greater opportunity to enter the sports telecasting area. Pay television is making some inroads into sports programming, but it does not appear that the professional sports leagues are abandoning conventional television. The Milwaukee Brewers recently announced plans to telecast 26 home games over a Milwaukee pay TV station during the 1981 and 1982 baseball seasons. This is probably an experiment to test local response, because the team will still broadcast 60 of its games over conventional TV. All of those are road games.<sup>85</sup>

The professional sports leagues continue to rely upon the national networks for the bulk of their national telecasting. At this writing, Major League Baseball appears on NBC and ABC. The National Basketball Association is covered by CBS. The National Football League plays before the cameras of CBS, NBC, and ABC. The National Hockey League's audience ratings fell during 1972 and 1973, while some of the league's games were being telecast by NBC. Since the 1973-74 season, the NHL has not had a regular season network contract. Although it does not concern professional sports, the National Collegiate Athletic Association's recent sale of its basketball rights to CBS indicates that network competition for desirable sporting events is still keen. The NCAA basketball contract had been with NBC.

## NOTES

<sup>1</sup>Sports Broadcasting Act of 1975, Hearings before the Subcommittee on Communications of the Committee on Interstate and Foreign Commerce, House of Representatives, 94th Congress, 1st Sess. on H.R. 9566, (Washington: U.S. Government Printing Office, 1975), p. 139. (Hereafter referred to as 1975 House Hearings)

<sup>2</sup>Ibid., pp. 34, 53.

<sup>3</sup>"Rozelle sings no-show blues," Broadcasting, September 24, 1973, p. 52.

<sup>4</sup>Ibid.

<sup>5</sup>Ibid.

<sup>6</sup>"Chirp-Chirp, Crunch-Crunch," Sports Illustrated, October 1, 1973, p. 39.

<sup>7</sup>Ibid., p. 38.

<sup>8</sup>Ibid., p. 40.

<sup>9</sup>Report of the Federal Communications Commission on the Effect of Public Law 93-107, The Sports Antiblackout Law, on the Broadcasting of Sold-Out Home Games of Professional Football, Baseball, Basketball, and Hockey, (Washington: U.S. Government Printing Office, 1974), p. 4. (Hereafter referred to as 1st FCC Report)

<sup>10</sup>Ibid., p. 51.

<sup>11</sup>Ibid., p. 5.

<sup>12</sup>Ibid.

<sup>13</sup>1972 House Evaluation, p. 4.

<sup>14</sup>1st FCC Report, pp. 5-7.

<sup>15</sup>Ibid., p. 7.

<sup>16</sup>Ibid., pp. 9-10.

<sup>17</sup>Ibid., p. 11 (total paid attendance for 1973 was 10,730,933).

<sup>18</sup>Ibid., p. 52.

<sup>19</sup>Ibid., p. 14.

<sup>20</sup>Ibid., pp. 16-17.

<sup>21</sup>Ibid., p. 19.

<sup>22</sup>Ibid., p. 26.

<sup>23</sup>Ibid., p. 32.

<sup>24</sup>Ibid., p. 35.

<sup>25</sup>Second Annual Report of the Federal Communications Commission on the Effect of Public Law 93-107, The Sports Antiblackout Law, on the Broadcasting of Sold-Out Home Games of Professional Football, Baseball, Basketball, and Hockey, (Washington: U.S. Government Printing Office, 1975), p. 123. (Referred to hereafter as 2nd FCC Report)

<sup>26</sup>Ibid., p. 86.

<sup>27</sup>Ibid., p. 6.

<sup>28</sup>Ibid., p. 9.

<sup>29</sup>Ibid., p. 35.

<sup>30</sup>Ibid., p. 69.

<sup>31</sup>Ibid., pp. 4-6.

<sup>32</sup>Ibid., pp. 50-51.

<sup>33</sup>Ibid., pp. 51-52.

<sup>34</sup>H.R. 9566, 94th Cong., 1st Sess. (1975).

<sup>35</sup>1975 House Hearings, pp. 2-3.

<sup>36</sup>"Macdonald blisters NFL for claims of harm from blackout law," Broadcasting, September 29, 1975, p. 38.

<sup>37</sup>S. 2554, 94th Cong., 1st Sess. (1975).

<sup>38</sup>TV Blackout of Sporting Events, Hearing before the Subcommittee on Communications of the Committee on Commerce, United States Senate, 94th Cong., 1st Sess. on S. 2554, (Washington: U.S. Government Printing Office, 1975), pp. 4-5. (Hereafter referred to as 1975 Senate Hearings)

<sup>39</sup>1975 House Hearings, p. 8.

<sup>40</sup>Ibid., p. 9.

<sup>41</sup>121 Cong. Rec., 40645.

<sup>42</sup>1975 Senate Hearings, p. 35.

<sup>43</sup>121 Cong. Rec., 39041.

<sup>44</sup>Ibid., 40645.

<sup>45</sup>Ibid.

<sup>46</sup>Ibid.

<sup>47</sup>"Antiblackout bill will die this year," Broadcasting, December 22, 1975, p. 22.

<sup>48</sup>"Macdonald retirement changes the line-up," Broadcasting, May 3, 1976, p. 42.

<sup>49</sup>"House blows whistle on Pastore blackout pronouncement," Broadcasting, May 3, 1976, p. 24.

<sup>50</sup>Ibid.

<sup>51</sup>Ibid.

<sup>52</sup>"House and Senate settle differences on antiblackout," Broadcasting, May 24, 1976, p. 54.

<sup>53</sup>Ibid.

<sup>54</sup>Ibid.

<sup>55</sup>"Televising Sports Events," Congressional Quarterly Weekly Report, 33, p. 2789.

<sup>56</sup>Inquiry Into Professional Sports, Final Report of the Select Committee on Professional Sports, United States House of Representatives, (Washington: U.S. Government Printing Office, 1977), p. 112.

<sup>57</sup>Ibid.

<sup>58</sup>"Where things stand," Broadcasting, October 4, 1976, p. 10.

<sup>59</sup>Third Annual Report of the Federal Communications Commission on the Effect of Public Law 93-107, the Sports Antiblackout Law, on the Broadcasting of Sold-Out Home Games of Professional Football, Baseball, Basketball, and Hockey, (Washington: U.S. Government Printing Office, 1976), pp. 5-6. (Hereafter referred to as Third FCC Report)

<sup>60</sup>Ibid., p. 8.

<sup>61</sup>Ibid., p. 27.

<sup>62</sup>Ibid., p. 9.

<sup>63</sup>Ibid., p. 29.

<sup>64</sup>Ibid., p. 32.

<sup>65</sup>Ibid.

<sup>66</sup>Ibid., p. 264.

<sup>67</sup>Ibid., p. 270.

<sup>68</sup>John J. Siegfried and C. Elton Hinshaw, "Professional Football and the Anti-Blackout Law," Journal of Communication, 27, p. 172.

<sup>69</sup>Ibid., p. 173.

<sup>70</sup>Ibid., p. 174.

<sup>71</sup>Fourth Annual Report of the Federal Communications Commission on the Effect of Public Law 93-107, The Sports Antiblackout Law, on the Broadcasting of Sold-Out Home Games of Professional Football, Baseball, Basketball, and Hockey, (Washington: U.S. Government Printing Office, 1977), p. 151, (Hereafter referred to as Fourth FCC Report); and Fifth Annual Report of the Federal Communications Commission on the Effect of Public Law 93-107, the Sports Antiblackout Law, on the Broadcasting of Sold-Out Home Games of Professional Football, Baseball, Basketball, and Hockey, (Washington: U.S. Government Printing Office, 1978), p. 89. (Hereafter referred to as Fifth FCC Report)

<sup>72</sup>"Rozelle Against New Blackout Ban," Washington Post, March 14, 1978, Sec. D, p. 1.

<sup>73</sup>S. 2728, S. 2756, H.R. 11507, H.R. 11623, 95th Cong., 2nd Sess. (1978).

<sup>74</sup>"Congress Planning NFL TV Hearings," Washington Post, April 5, 1978, Sec. F, p. 5.

<sup>75</sup>Sports Anti-Blackout Legislation--Oversight, Hearing before the Subcommittee on Communications of the Committee on Interstate and Foreign Commerce, House of Representatives, 95th Cong., 2nd Sess., (Washington: U.S. Government Printing Office, 1979), pp. 1-81.

<sup>76</sup>Fourth FCC Report, p. xi.

<sup>77</sup>Ibid.

<sup>78</sup>Ibid.

<sup>79</sup>Fifth FCC Report, p. 5.

<sup>80</sup>"Closed Circuit," Broadcasting, November 14, 1977, p. 5.

<sup>81</sup>Ibid.

<sup>82</sup>Interview with Thomas C. Williams, counsel to National Football League, Washington, D.C., March 22, 1981 (telephone).

<sup>83</sup>Home Box Office v. Federal Communications Commission.

<sup>84</sup>"CATV Jurisdiction Over, By FCC--CATV Pay Cable," 67, FCC 2d. 252.

<sup>85</sup>"Brewers plan pay TV tilts," Topeka (Kansas) Capital Journal, March 22, 1981, p. 39.

CHAPTER V  
THE SIGNIFICANCE OF  
P.L. 93-107

There are six features concerning the passage of P.L. 93-107 that make this legislation unusual. First, it is interesting to note that the antiblackout law made the National Football League, and other professional sports leagues, a concern of the Federal Communications Commission. The sports leagues were required to provide the Commission with a vast amount of information about ticket sales, no-shows, parking and concession revenues, and league television ratings.<sup>1</sup> It was the entities providing programming (the leagues), not the carriers of the programming (the broadcast licensees), that were answerable to the FCC. There is no indication that this type of regulatory oddity occurred either before or since the passage of P.L. 93-107. However, it appears that this precedent could allow Congress to place other program suppliers under the regulatory control of the FCC.

Second, the passage of P.L. 93-107 was the first time that Congress had placed conditions on the continuance of an antitrust law exemption.<sup>2</sup> The antitrust exemption allowed pooled-rights contracts. If any games broadcast pursuant to such a contract were sold out, then those games were required to be shown on local television. Again, the precedent has been set that could allow conditions to be placed on any other antitrust exemptions which may exist.

Third, the antiblackout law mandated that a producer of programming (for example, the NFL) make certain programs (sold out home games)

available for local telecasting, with the FCC monitoring this process. In certain situations, this would put the federal government in the role of programmer for the networks. The ability to determine what programming will appear on the television networks is normally reserved for network programmers. The final decision to air or not to air a particular network program rests with each station. Regarding this, National Hockey League counsel Philip Hochberg wrote that, "The First and Fifth Amendment questions of conditioning the 'right to speak' cannot be ignored."<sup>3</sup>

Fourth, the Senate and House Commerce Committees had jurisdiction over an antitrust issue, an area usually reserved for the Judiciary Committee.<sup>4</sup> The bills' writers got around the jurisdictional question by drafting the bills as amendments to the Communications Act. Therefore, it can be assumed that if a committee chairman is deeply interested in a certain issue over which his committee has no jurisdiction, then he could write a bill encompassing the issue, but in doing so relate it to a particular area over which his committee does have power. Although this procedure may not be uncommon during congressional action, it might not be a proper method for determining regulatory policy.

Fifth, the speed with which the antiblackout bill passed through Congress in 1973 is remarkable. However, Harry Shooshan points out that " . . . rarely is there such overwhelming public support for legislation and such little partisan discord over its specifics," than there was with the antiblackout bill.<sup>5</sup> In 1976, when there was a great deal of disagreement between the Senate and House over the antiblackout issue, the proposed legislation died. The passage of the antiblackout law shows how quickly the legislative process can work when the circumstances are ideal.

Finally, the effect of the law has outlived its existence. The NFL still abides by the spirit of the former law. Following the expiration

of P.L. 93-107 on December 31, 1975, the professional baseball, basketball, and hockey leagues chose not to follow the law. It appears that there is no pressure for them to do so. The NFL, however, has felt congressional pressure to continue the policy of locally telecasting sold out home games. It is emphasized again that the main focus of antiblackout legislation was the NFL. Because the NFL has continued the broadcasting practices outlined in the antiblackout law, it is unlikely that any new legislation concerning blackouts will be introduced. Until and unless the NFL can show that its compliance with the former law is endangering the existence of the league (which seems improbable), it seems likely to continue to abide by the spirit of P.L. 93-107.

To say that the passage of P.L. 93-107 was a vital moment in the history of broadcast regulation would be an exaggeration. Sports broadcasting is not (and should not be) considered to be a major policy area for the government of the United States. The antiblackout law met the goal for which it was intended: to stop local blackouts of professional football games when the games were sold out. The major significance of P.L. 93-107 is that, for a time, non-broadcast entities (the professional sports leagues) were under some influence from the Federal Communications Commission.

## NOTES

<sup>1</sup>Fifth FCC Report, p. 90.

<sup>2</sup>Shooshan, Syracuse Law Review, 25, p. 744; and Hochberg, Federal Communications Bar Journal, 27, p. 74.

<sup>3</sup>Hochberg, Federal Communications Bar Journal, 27, p. 74.

<sup>4</sup>Shooshan, Syracuse Law Review, 25, p. 744; and Hochberg, Federal Communications Bar Journal, 27, p. 74.

<sup>5</sup>Shooshan, Syracuse Law Review, 25, p. 744.

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THE SPORTS ANTIBLACKOUT LAW OF 1973:  
A CASE STUDY OF GOVERNMENT INTERVENTION  
INTO PROFESSIONAL SPORTS BROADCASTING PRACTICES

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AN ABSTRACT OF A MASTER'S THESIS

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This thesis endeavors to bring together, in a single volume, the information available concerning the history of Public Law 93-107, better known as the sports antiblackout law. The law, passed in 1973, prohibited the television blackout of professional events in four major sports (football, baseball, basketball, and hockey) in the home territory of the home team. Blackouts were prohibited, however, only when the events were sold out 72 hours prior to starting time. P.L. 93-107 created section 331 of the Communications Act of 1934, and caused the Federal Communications Commission to become involved in monitoring the financial viability of professional sports teams.

Although the antiblackout law covered four professional sports, the main focus of the law was on the broadcasting practices of the National Football League. The league had been the target of two Justice Department antitrust lawsuits, the first of which, in 1953, stripped the league of all of its blackout rights except the blackout of outside games in the home territory of a team playing at home. The second lawsuit, in 1961, barred the league from entering into a television contract which would, for the first time, pool the television rights of all NFL teams for exclusive sale to one network (CBS). An antitrust law exemption, allowing such pooled rights agreements, was granted by Congress in the same year. It is interesting to note that the local blackouts of home games were never a part of either the 1953 or 1961 court decisions, nor the 1961 antitrust exemption. This type of blackout was considered a normal part of the marketing strategy of each sports club.

By 1972, there was a great deal of public, Congressional, and Presidential support for the abolition of local blackouts of home games. Because NFL games were being sold out with apparent regularity, it was argued that there was no need for local blackouts. The sports leagues argued that passage of an antiblackout law would mean lower attendance, and eventually a reduction in ticket sales, as fans stayed home to watch the games on television. There were several antiblackout bills introduced in 1972, but none became law. In 1973, the Congress moved with surprising speed during the week before the beginning of the NFL season. Through the use of unique negotiations, the legislators involved were able to avoid a time-consuming conference committee meeting on the House and Senate versions of the bill, and passed the antiblackout law in just four days.

As predicted by the NFL in hearings on antiblackout legislation, the number of "no-shows" at league games increased, and ticket sales dropped, after the enactment of the law. Statistical studies conducted by the FCC, however, would seem to indicate that weather factors had more influence on the number of no-shows, and a team's won-loss record had more effect on ticket sales, than the local telecast of home games.

The antiblackout law expired on December 31, 1975, and further efforts to pass new antiblackout legislation have not been successful. However, the NFL has continued to abide by the spirit of the former law, and will probably continue to do so.