H.R. REP. 93-483, H.R. Rep. No. 483, 93RD Cong., 1ST Sess. 1973, 1973 U.S.C.C.A.N. 2032, 1973 WL 12617 (Leg.Hist.)

**\*2032** P.L. 93-107, TELEVISION-- PROFESSIONAL SPORTS

Senate Report (Commerce Committee) No. 93-347,

July 26, 1973 (To accompany S. 1841)

House Report (Interstate and Foreign Commerce Committee) No. 93-483,

Sept. 11, 1973 (To accompany H.R. 9553)

Cong. Record Vol. 119 (1973)

DATES OF CONSIDERATION AND PASSAGE

Senate September 6, 13, 1973

House September 13, 1973

The Senate bill was passed in lieu of the House bill after substituting for its language the text of the House bill.

The House Report is set out.

                                                                                  (CONSULT NOTE FOLLOWING TEXT FOR INFORMATION ABOUT OMITTED MATERIAL.  EACH     COMMITTEE REPORT IS A SEPARATE DOCUMENT ON WESTLAW.)

HOUSE REPORT NO. 93-483

Sept. 11, 1973

THE Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 9553) to amend the Communications Act of 1934 for one year with regard to the broadcasting of certain professional home games, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

Purpose

The purpose of this legislation is to provide for live television broadcasting within the home territory of professional football, baseball, basketball, and hockey clubs of the games played by such clubs at home which are sold out and which are to be televised elsewhere pursuant to a league television contract.

Summary of Reported Bill

The bill, as reported, adds a new section 331 to part 1 of title III of the Communications Act of 1934.

Section 331(a) provides that if any game of a professional sports club is to be televised pursuant to a league television contract and all tickets for seats made available 120 hours (5 days) or more before the scheduled beginning time of the game have been purchased 72 hours (3 days) or more before such time, no agreement preventing the televising of such game at the same time and in the area in which the game is being played would be valid. The person or persons having the rights to telecast the game locally would be required to those rights available to a television broadcast licensee on reasonable terms and conditions.

Under section 331(b), any interested person could commence a civil action in a U.S. District Court for injunctive relief restraining any person from violating subsection (a) of this section.

**\*2033** Section 331(c) defines the terms (1) ‘professional sports club ‘, (2) ‘legal television contract‘, (3) ‘agreement‘, and (4) ‘available for purchase by the general public‘.

Section 331(d) requires the Federal Communications Commission to conduct a continuing study of the effect of the new section 331 and to report, not later than April 15 of each year, to the Committee on Commerce of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives the results of its study.

Committee Action

The Subcommittee on Communications and Power of the Committee on Interstate and Foreign Commerce held hearings on H.R. 9553 and several other bills having a similar purpose on July 31, August 1, and 2, 1973. The hearings were resumed on September 5, 6, and 7 at the conclusion of the congressional recess. Testimony was received from Thomas E. Kauper, Assistant Attorney General, Department of Justice; and Dean Burch, Chairman of the Federal Communications Commission. In addition, representatives of the National Hockey League, the National Basketball Association, Professional Baseball, the National Football League, the American Broadcasting Company, the National Broadcasting Company, the Columbia Broadcasting System, the National Cable Television Association, a concession company, certain individual professional sports clubs, and other interested parties appeared and testified. The Subcommittee reported H.R. 9553, with amendments to the full Committee on September 10, 1973. On September 11, 1973, the full Committee, in open session, considered the Subcommittee recommendations and reported H.R. 9553, with the amendments reported by the Subcommittee, by a virtually unanimous voice vote.

Legal History

I. The Grim Decision

In 1953, in the case of United States v. the National Football League 1 Judge Allen K. Grim held that certain broadcasting practices of the National Football League were outside the scope of the antitrust laws. Judge Grim found that it was illegal for local teams to restrict telecasts of the games of other teams into the local home territories when the local team was on the road and itself televising back to its local area. Judge Grim held that an agreement by the clubs in which one team agreed not to televise its games into the home territory of another club when that other club was at home was also a restraint of trade, but not an unreasonable restraint of trade. Contrary to common belief Judge Grim made no decision on any practice wherein the local team refused to televise its own home games in its own home territory. As Commissioner Rozelle stated to the Subcommittee in the recent hearing:

(A) Federal Court concluded that it was reasonable and proper for the NFL clubs to keep telecasts of outside games, that is, the games of other teams, out of their home territories **\*2034** when they were playing at home . . . This litigation . . . was concerned solely with the televising of outside games locally. At no time during the course of this litigation . . . did anyone ever concern themselves with the clubs' traditional practice of not televising games locally.

Judge Grim's Final Judgment in the case precluded the National Football League from entering into any agreement ‘restricting the areas within which . . . telecasts . . . may be made‘.

II. 1961 Construction

By 1961, a number of professional sports leagues, including the newly formed competitor of the NFL-- the AFL-- had entered into league-wide television contracts (see Infra). The National Football League likewise attempted to enter into a league-wide contract pooling the rights of its member clubs. The League sought a construction of its contract with the Columbia Broadcasting System from Judge Grim in an effort to determine the validity of the contract in light of the 1953 decree. Judge Grim held that the CBS contract in fact violates his prior decree. 2

III. Public Law 87-331

The National Football League, being the only league specifically precluded from entering into a league-wide television contract, sought congressional relief. In response, the Congress enacted what has commonly been called the ‘Sports Broadcasting Act‘ (see Public Law 87-331, 15 U.S.C. 1291-95).

Public Law 87-331 had three major provisions--

(1) allowing professional football, baseball, basketball and hockey teams to jointly sell the rights of the member clubs in sponsored telecasts;

(2) limiting the antitrust exemption referred to above when a team prohibits telecasting ‘except within the home territory of a member club of the league on a day when such club is playing a game at home‘; and

(3) providing protection for intercollegiate football games from the telecasts of professional football games.

IV. Public Law 89-800

In 1966 the National Football League returned to Congress seeking legislation allowing its merger with the American Football League. Congress, in granting the right to merge, amended the Sports Broadcasting Act (P.L. 87-331) to provide greater protection for non-professional contests played at the same time as professional telecasts.

Broadcast Practices

I. Past Practices

Professional Football

Prior to 1953, the National Football League had adopted practices which later became the subject of the antitrust suit by the United States against the National Football League.

**\*2035** For a number of years after the 1953 decision, the broadcasting practices of the member clubs of the National Football League stabilized. By the late 1950s, eleven individual teams had signed contracts with the Columbia Broadcasting System; two teams-- Baltimore and Pittsburgh-- had signed contracts with the National Broadcasting Company; and one team-- Cleveland-- had organized its own network. In part as a response to the pooled contract negotiated by the American Football League, the National Football League sought to pool the rights of its member clubs for sale to the Columbia Broadcasting System.

In 1961 primarily all of NFL revenues were derived from gate receipts, whereas presently about one-third of NFL revenue is derived from television contracts. Moreover, prior to the pooling agreements there were considerable variations among the individual clubs in the television revenues received. In 1961 for example, the Green Bay Packers, the Western Division champion, received $120,000, whereas the Washington Redskins, who finished last in the Eastern Division received $250,000. Consequently, the clubs agreed to share television revenues equally. In 1962, the first year under the pooling agreement, the television contract amounted to $4.6 million or $332,000 for each of the 14 existing NFL clubs. The eight AFL clubs received about $212,000 each.

Subsequent to the passage of Public Law 87-331, the National Football League in fact did pool the rights of its member clubs and sold them to CBS. Between 1961 and 1966, the National Football League's broadcasting pattern again appeared to stabilize: Away games of the local team were telecast back to the home territory; there were no telecasts of other National Football League games in the home territory when the local team played at home. At the same time, however, in the cities that the National Football League was blacking out on its own volition, games of the American Football League were being telecast.

In response to the competition from the American Football League telecasts in part, the National Football League in 1966 began televising games into its own home territory when the local National Football League team was playing at home. During that same year, the National Football League again came to Congress seeking Congressional approval of the merger between the National Football League and the American Football League. Subsequently, the National Football League adopted its current telecasting policies of bringing National and American Conference games into territories with franchises around the country at the time the home team was playing at home.

Professional Baseball, Basketball, and Hockey

The practices of the other three major sports-- baseball, basketball, and hockey-- have changed little in the past two decades. As a general rule, teams in these sports have pooled their rights for the telecasting of only a small percentage of their games. The vast numbers of telecasts are in fact contracted for through locally-negotiated contracts, arranged by the individual clubs. Generally, the teams have not telecast their home games to any substantial degree, although some notable exceptions-- the New York Mets, the New York Yankees, the Chicago Cubs, the Chicago White Sox, and the Boston Bruins-- have in fact telecast a substantial number of home games. The concept of pooling long preceded Public Law 87-331's enactment in 1961; for instance, **\*2036** in 1954 the National Basketball Association pooled the rights to some of the games of its member clubs; in 1957 the National Hockey League also sold a pooled contract. Although the passage of Public Law 87-331 in 1961 was specifically designed to establish parity between the National Football League and the American Football League, it provided a benefit to all four professional sports. Notwithstanding any practices prior to 1961, the legislation effectively insulated league-wide pooling from any antitrust attack. To that extent, while the National Football League was the primary beneficiary of Public Law 87-331, each league received benefits.

III. Current Practices

Investigations Subcommittee Report

The Special Subcommittee on Investigations of the Interstate and Foreign Commerce Committee conducted a comprehensive review in the Spring of 1973 evaluating the necessity for television blackouts of professional sporting events with particular emphasis on professional football. This report concludes that the NFL clubs no longer need the degree of protection presently provided by antitrust exemptions granted by Congress in 1961 permitting the blackouts. The conclusion is based on the fact that the original justification for permitting blackouts, i.e., to assist the clubs in obtaining financial stability, is no longer necessary. The conclusion is also based on the belief that the change in present television blackout policy would probably not result in a reduction in paid or actual attendance at games which are sold out. The report disclosed that, based on a criteria of a game being sold out when all tickets for seats (not standing room) are sold out, 124 of the 182 regular season games were sold out for the 1972 season. The report further disclosed that 151 of 182 games (82 percent) in 1972 had 95 percent or more capacity in attendance.

The report points out that in recent years, professional football has gained unprecedented popularity. Since 1965, four additional club franchises have been granted, the league has become financially strong and, additional games have been played by each team with substantially increasing attendance. Presently the television contracts for the league are reported to amount to $46 million or $1.8 million for each club. It is further reported that all NFL clubs are making a profit as contrasted with the other sports leagues in which many clubs, and in at least one instance all clubs, are currently not making a profit. As a consequence the report finds the impact of television blackouts is considerably greater today than ever before, resulting in millions of fans being denied access to games of their home teams. According to the report, the result of Public Law 87-331 has been to enhance significantly the economic stability of professional football.

Professional Football

The National Football League presently contracts on a pooled basis with the three major television networks to televise all regular season and post-season games and nine of the pre-season games.

The contracts provide that all games will be televised in the home territory of the visiting club as well as on selected regional or national hookups or both. In addition, the contracts provide that no games will be televised in the territory of the home club. This provision is based **\*2037** on the NFL constitution and bylaws which provides: ‘No television station may carry or broadcast the game if the signal is visible in the home territory (75 miles) of the home club in the city where the game is being played.‘

In practice, the 75 mile blackout limitation is not consistently applied due to technological circumstances. There are instances where stations whose signal penetration does not come within the 75-mile limitation are precluded from televising games because their programming is dependent upon a signal from a blacked out station. Due to variances in signal strengths among stations, topography and reception facilities, it is impossible to define with any accuracy the actual areas blacked out for a particular club.

Professional Baseball, Basketball, and Hockey

Professional baseball, the National Basketball Association, and the National Hockey League contract with the three major television networks on a pooled basis for a limited number of their games. The majority of the games televised are contracted by individual clubs with local broadcast licensees. These sports leagues contract nationally with the networks for a Game of the Week and all or some of their post-season games. Professional baseball provides for a blackout in the territories of the participating clubs for all regular season Games of the Week but not for the post-season playoff and championship games, The National Basketball Association in 1972 limited the number of games that may be blacked out in each city to a total of 25 for the season. The National Hockey League stated that it did not blackout a single network telecast in the 1972-73 season.

Analysis of Committee Amendment

The committee amendment to the test of the bill strikes out all after the enacting clause of the bill and inserts a new text. The amendment amends part I of title III of the Communications Act of 1934 to add a new section 331 which will take effect on the date of the enactment of the bill.

The new section 331 applies to the live television broadcasting, within the home territory of professional football, baseball, basketball, and hockey clubs, of the games of such clubs which are played at home and which are to be broadcast by means of television pursuant to a league television contract.

Under subsection (a), the right to broadcast by means of television any game (whether pre-season, regular-season, or post-season) of such a sports club within the area in which, and at the time, it is played is to be made available, by the person or persons having such right, to a television broadcast licensee on reasonable terms and conditions if--

(1) the game is to be televised pursuant to a league television contract, and

(2) the tickets of admission for seats at such game which were available for purchase by the general public at the stadium where such game is to be played (or if no tickets for such game are sold at the stadium, at the box office closest to such stadium) 120 hours before the scheduled beginning time of the game are sold out at least 72 hours before such time. **\*2038** Furthermore, any agreement (other than an agreement designed to carry out the requirements of section 3 of Public Law 87-331 (15 U.S.C. 1293) relating to the telecasting of professional football games at the time of intercollegiate or interscholastic football games) which would prevent the televising of such game at such time and in such area is declared invalid and shall have no force or effect.

As noted, this new section 331 applies only to games which are to be televised pursuant to a league television contract. A league television contract is the type of contract which was exempted from the antitrust laws by Public Law 87-331 and under which all or part of the rights of the members of a league in the sponsored telecasting of their games is sold or otherwise transferred by the league.

The tickets to be considered for purposes of the requirements of subsection (a) are tickets of admission for seats at a game. Thus, tickets which admit a person to view a game while standing are not to be considered. Further, only the tickets available for purchase by the general public at least 120 hours before the scheduled beginning of the game will be considered. Clearly, tickets held for sale on the day a game is to be played will not be considered. Moreover, only those tickets held for sale at the stadium in which the game is to be played (or if tickets are not sold at the stadium, held for sale at the box office nearest the stadium) are to be considered. If any of the tickets to a game which are to be considered for purposes of such requirement remain unsold 72 hours before the scheduled beginning of the game, such requirement does not apply with respect to the televising of such game.

The right to broadcast a game by means of television which is to be made available under subsection (a) to a television broadcast licensee is the right to broadcast that game (1) in the area in which the game is being played, and (2) at the time the game is being played.

Subsection (b) prescribes the manner in which the requirement of subsection (a) may be enforced other than by the imposition of criminal penalties under section 501 of the Communications Act of 1934. If the person (or persons) who have the rights in the broadcasting by means of television of a game of a professional football, baseball, basketball, or hockey club which is subject to subsection (a) refuse to make available, in accordance with subsection (a), to any television broadcast licensee the right to broadcast such game, any interested person may commence a civil action in the United States district court for the district in which the person (or persons) having such rights reside or have an agent to require such person (or persons) to comply with subsection (a). In such an action, the court may award the costs of the suit, including reasonable attorneys' fees.

The form of the action authorized by subsection (b) will be an action for a mandatory injunction. Under Rule 65 of the Federal Rules of Civil Procedure the court may act immediately and enter a temporary restraining order if it clearly appears from specific facts that ‘immediate and irreparable injury, loss, or damage will result‘ to the applicant before the adverse party (or his attorney) can be heard in opposition. It should be noted that under the rule such an order may be issued only if the applicant gives security in such sum as the court determines for costs and damages as may be incurred or suffered by any party who is wrongfully enjoined.

As noted above, section 501 of the Communications Act of 1934 prescribes a fine of up to $10,000 or imprisonment for not more than one **\*2039** year (two years in the case of two or more convictions), or both such fine and imprisonment, for willfully or knowingly failing to do any act, required by the Act.

Subsection (c) contains definitions for certain terms used in the new section 331. Each of the defined terms is explained in other parts of this analysis.

Under subsection (d), the Federal Communications Commission is to conduct a continuing study of the effect of the requirements of subsection (a) and is to report to the Commerce Committee of the Senate and the Interstate and Foreign Commerce Committee of the House, not later than April 15 of each year, the results of such study, including pertinent statistics and data and any recommendations for legislation relating to the broadcasting of professional football, baseball, basketball, and hockey games which the Commission determines would serve the public interest.

Cost

Enactment of this legislation will not involve any costs to the Federal Government.

Conclusion

Your Committee believes that professional sports clubs have benefited substantially from legislation previously enacted by the Congress, exempting certain of their activities from the operation of the Federal antitrust laws. The legislation herein reported exacts for these previously conferred benefits the requirement that sold out games of such clubs which are televised pursuant to a league television contract must be made available for live television showing in the area in which the game is being played. While the legislation may result in some additional ‘no shows‘ at sold out games which are televised under its provisions, with some consequential diminution of revenues from such sources as parking fees and concessions, the benefits that flow from its enactment far outweigh those shortcomings.

Your committee is convinced that this legislation serves the public interest and urges its speedy enactment.

1 116 F. Supp. 319, E.D. Pa., 1953.

2 196 F. Supp. 445 (E.D. Pa. 1961) P.L. 87-331.

                                                                                  (Note:  1.  PORTIONS OF THE SENATE, HOUSE AND CONFERENCE REPORTS, WHICH ARE     DUPLICATIVE OR ARE DEEMED TO BE UNNECESSARY TO THE INTERPRETATION OF THE LAWS, ARE OMITTED.  OMITTED MATERIAL IS INDICATED BY FIVE ASTERISKS:  \*\*\*\*\*.                  2.  TO RETRIEVE REPORTS ON A PUBLIC LAW, RUN A TOPIC FIELD SEARCH       USING THE PUBLIC LAW NUMBER, e.g., TO(99-495))

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