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Cable and Satellite Television Network Tiering and a la Carte Options for Consumers: Issues for Congress

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Proposal: Place High Cost Sports Networks on a Separate Cable Tier

Major sports networks are unique in a number of ways. First, the per subscriber license fees to cable and satellite operators for major sports networks are far higher than those for almost any other networks. In 2001, when the average license fee per subscriber per month was $0.13 for national cable networks, the license fee for ESPN was $1.53 and for FOX Sports was $0.70.[68] By the end of 2003, the license fees for ESPN and FOX both exceeded $2.00 per subscriber per month.[69] Regional sports networks, such as the YES Network owned by the New York Yankees, also have relatively high per subscriber license fees. GAO found that license fees for sports networks have been growing at more than twice the rate of non-sports networks.[70]

Second, with the exception of the Super Bowl, World Series, and some Olympic events, only a minority of television viewers regularly view sports programming, and many households never watch such programming. Thus, under the current system of sports programming being offered on the expanded basic service tier, with a per subscriber fee imposed based on total subscribership rather than on actual viewers, sports networks represent a far higher portion of cable operator programming costs than they do cable operator viewers. James Robbins, chief executive of Cox Cable, reportedly stated at a Goldman Sachs investors conference that ESPN accounted for 4% of Cox subscribers' viewing, but 18% of Cox programming costs.[71]

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[67]See footnote 32 above.

[68]Kagan World Media, *Economics of Basic Cable Networks 2003*, September 2002, table entitled "Average License Fee per Subscriber per Month by Network," at pp. 53-54.

[69]Peter Grant, "Cox to Blame Cable Sports for Rate Surge," *Wall Street Journal*, October 6, 2003, at p. B1.

[70]GAO Report at p. 22.

[71]David D. Kirkpatrick and Geraldine Fabrikant, "Sports Fan Is the Prize, or the Victim, in Cable Fight," *New York Times*, October 6, 2003, at pp. C1 and C4. This claim appears to be consistent with other available data. According to Nielsen data analyzed by TN Data, in 2000 (the latest year for which data were available), the average U.S. television household

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Third, for the minority of television viewers who are sports fans, their demand for sports programming is intense and they are more likely than the viewers of other programming to subscribe to a premium sports channel if that were the only source of the desired sports programming. For example, when Cablevision took the YES Channel off its expanded basic service tier and made it available to subscribers in two options – on its own for $1.95 per month or as part of a new premium sports tier at $4.95 per month – about half its subscribers elected to receive the YES Channel through one or the other of those options.[72]

Fourth, although programming of major sports is viewed by cable and satellite operators as "must have" programming, the sports programmers report financial losses from winning the rights to these major sports. For example, News Corp. reported on February 12, 2002 that it took a $909 million operating charge in the second quarter because of its three major professional sports television contracts.[73] According to Steve Sternberg, senior vice president and broadcast research director at TN Media:[74]

> There's a cachet to having sports, especially major sports. They're like a loss leader. Sports promote the networks' primetime lineups and sports are one of the things that drive people to their internet sites.

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[71](...continued)
watched 213.5 hours of nationally televised sports programming including the Olympics, 200.4 hours excluding the Olympics. (See Kevin Downey, "Sports TV get pricier and pricier. Here's why."available at [http://www.medialifemagazine.com/] news2001/ apr01/ apr09/4_thurs/news1thursday.html, viewed on 5/12/2004.) Of the 200.4 viewed hours, 103.6 were on broadcast networks, 74.7 on expanded basic cable networks, and 22.1 on broadcast syndication. (There was additional viewing of regional cable networks.) Assuming half the Olympics viewing was on cable networks, the average U.S. household watched about 80 hours of sports programming on expanded basic cable networks in 2000. According to a recent Nielsen Media Research report entitled "Average Daily Viewing 1949-2003," in the broadcast year September 2000-August 2001, U.S. television households spent on average 7 hours, 47 minutes per day watching television; this increased to 8 hours, 12 minutes in September 2002-August 2003. As discussed earlier, a little more than half that viewing was of cable networks. On average U.S. households watch a little less than 4 hours of expanded basic television per day – or about 1,420 hours per year. Thus, about 5.6% of household cable viewing is of national sports networks (80 ÷ 1420). Given the very high per subscriber charges for ESPN and FOX Sports networks, it certainly is likely that the proportion of programming costs associated with those national sports networks exceeds the proportion of cable and satellite viewer time spent watching national sports networks approximately as claimed by Mr. Robbins.

[72]See footnote 20 above.

[73]Peter S. Battin Media, "Television Sports Rights 2003," October 23, 2003, available on [http://www.gouldmedia.com/nv_rpt_tsr03.php], viewed on 5/12/2004.

[74]Kevin Downey, "Sports TV get pricier and pricier. Here's why." available at [http://www.medialifemagazine.com/news2001/apr01/apr09/4_thurs/news1thursday.html, viewed] on 5/12/2004. Broadcast and cable networks maintain Internet sites to provide additional information to viewers with high intensity of demand for their programming, to provide an additional marketing tool for their programming, and to gain additional advertising revenues. These Internet sites are potential profit centers.

Sports programmers apparently have made the strategic business decision to get into a competitive bidding environment to attain the rights to popular sports events even with the knowledge that, if they win the bid, they would be unlikely to recoup those costs directly from the sports programming shown. Rather, sports programmers may expect to benefit indirectly by exploiting the sports events to market their other programming to the highly desirable teenage and young adult male audience – both by cross-marketing their other programs and by "branding" their networks. Those programmers, of course, seek to recover as much of the costs as possible from program distributors – through the very high per subscriber fee imposed on cable operators and, for those sports programmers that own broadcast networks, through attempts to get their local stations affiliates to share the cost burden.[75]

Given these unique characteristics, the consumer benefits from a la carte purchasing may be greater for major sports networks than for other cable networks, and the consumer disadvantages may be less. Since the costs of major sports programming are disproportionately large relative to the audience they attract, when major sports networks are included on the expanded basic service tier those subscribers who are not sports fans are forced to bear a substantial burden. If major sports programming represents almost 20% of programming costs and half the subscribers do not watch that programming, then those non-fans are bearing almost 10% of total programming costs to fund programming they do not want.[76] Placing major sports programming on a separate tier would benefit these non-sports fans. At the same time, given the intensity of demand that sports fans have for major sports programming, it is likely that a substantial portion of sports fans would be willing to purchase that programming separately. As indicated earlier, half of Cablevision's subscribers paid separately to receive the YES Channel. Thus, it appears unlikely that the cable programmer business model, based on a single large expanded basic cable tier, would be threatened by placing major sports networks on a premium tier. In the March 25, 2004 Senate Commerce Committee hearing, James Robbins of Cox Communications stated that he opposed any requirement that cable operators be required to offer networks on an a la carte basis, but that Cox would consider offering a separate sports tier.[77] In that hearing, Mark Goldstein, director of physical infrastructure issues at GAO, indicated that sports programming represents the best choice of programming for a separate tier.[78]

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[75]See, for example, John Eggerton, "CBS, Affils Deal on NCAA," *Broadcasting & Cable*, December 8, 2003, at p. 10..

[76]Although an imperfect analogy, automobile purchasers typically can choose between a standard package of features and one or more premium packages. It is unlikely that a high-cost feature that is sought by only half of all customers would be included in the standard package.

[77]Senate Committee on Commerce, Science and Transportation Hearing on Escalating Cable Rates: Causes and Solutions, March 25, 2004.

[78]Ibid.