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Details:

(FORM UPDATED: 07/12/2010)

**WISCONSIN STATE LEGISLATURE ...  
PUBLIC HEARING - COMMITTEE RECORDS**

**2007-08**

(session year)

**Senate**

(Assembly, Senate or Joint)

**Committee on ... Commerce, Utilities and Rail  
(SC-CUR)**

**COMMITTEE NOTICES ...**

- Committee Reports ... **CR**
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**INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL**

- Appointments ... **Appt**
- Clearinghouse Rules ... **CRule**
- Hearing Records ... bills and resolutions  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                      (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**



November 2, 2007

TO: All Legislators

FROM: John D. Wiley  
Chancellor

RE: Big Ten Network

Nothing generates more discussion in Wisconsin than a feeling that something is being taken away. The current concerns over the availability of Badger football games on the Big Ten Network are very understandable. I am disappointed that this discussion overshadows the great things the network does for the university.

More than three years in the making, the Big Ten Network is a first-of-its-kind partnership between the member institutions of the Big Ten Conference and a major television provider. The network, launched in August, features a programming lineup of major events unparalleled within college sports TV today – more than 350 live events – including football and men's basketball, as well as more Olympic sports and women's sports programs than have ever been aired before. Additionally, the network will feature hundreds of hours of campus specific, non-athletic programming. With the current and potential viewer reach of the network, our university will gain exposure like we have never seen before.

This agreement that the conference has made to increase its exposure was created as a way to ensure that television revenue each university receives continues. Prior to forming the network, existing contracts with ESPN, ABC and other outlets were expiring, and the new agreements being offered included a significant retreat in exposure and revenue for all schools in the conference. Steady revenue through media agreements is key to ensuring student-athletes in all sports have the opportunity to compete at the highest level.

The formation of the Big Ten Network provided conference member schools a 20-year solution to the revenue and exposure issues. In fact, the agreement, which includes all 11 conference schools, ensures that the revenue generated and returned to schools is used for academic and athletic purposes. At the University of Wisconsin-Madison, the specific non-athletics areas funded include need-based scholarships, libraries and strategic academic collaborations.

Within 30 days of launch, the network was in nearly 30 million homes nationwide – the most successful launch of its kind in cable television history. It is being carried on Direct TV, Dish

All Legislators  
November 2, 2007  
Page Two

Network, AT&T and approximately 157 cable systems, including 15 in the state of Wisconsin – all are offering the Big Ten Network on their expanded basic lineup, and none is charging an extra fee to subscribers.

Even as negotiations continue with cable operators to carry the network, it is still very frustrating that agreements have not been struck with Time-Warner and Charter, the largest cable providers in Wisconsin. If cable systems in communities like Mt. Horeb, Richland Center and Westby can come to agreement, I can't understand why Time-Warner and Charter have chosen to leave Badger fans in the dark. I understand that Badger fans simply want the games on television and are not much interested in the details of the struggle to negotiate these deals. No one is more frustrated than I am.

The current legislation being discussed to bring the two sides together is clearly born out of frustration. It is this type of public discussion that must continue in order to give Badger fans what they want. Any idea to help facilitate this discussion is welcome. If compromise can be reached on a state budget between two sides with very diverging views, the Big Ten Network issue should be a slam dunk.

Unfortunately, there does not appear to be an immediate solution that would air the upcoming Wisconsin-Ohio State game in Time-Warner and Charter territories, however, it is my hope that this is temporary. It is unacceptable that Badger fans in these two cable territories are being held hostage by decisions Time-Warner and Charter have made to deny the widest distribution of Big Ten Network programming possible on an expanded basic tier of service.

This is an important issue for the university and the entire state. Please feel free to contact me on this issue if you have further questions.

Attachment

cc: Governor Jim Doyle  
UW System President Kevin Reilly

November 2, 2007

Dear Badger fans,

With the recent announcement that Saturday's game against No. 1 ranked Ohio State would be broadcast by the Big Ten Network, and as we get closer to the start of a men's basketball season in which 20 games will be aired on the Big Ten Network, we have received a number of phone calls, letters and e-mails from Badger fans who are frustrated that those broadcasts are not available on the state's two largest cable systems. We wanted to take a moment to bring you up-to-date on the issues and try to address some of those expressed concerns.

The development of the Big Ten Network, which launched just 65 days ago, has been in the works for nearly three years, and it included input from conference officials, school presidents, athletic directors, faculty representatives and more. In the opinion of those folks, the establishment of the Big Ten Network was the right thing to do to insure the long-time stability of Big Ten athletics. It is important from a recruiting standpoint, a financial standpoint and a marketing standpoint. It's a network that will focus on our schools and our student-athletes and the issues of importance to Big Ten fans.

From the outset, the network was offered to all satellite and cable providers. The only non-negotiable Big Ten Network demand was the inclusion of the network on the expanded basic package in the Big Ten region. Within 30 days of launch, the network was in nearly 30 million homes nationwide – the most successful launch of its kind in cable television history. It is being carried on Direct TV, Dish Network and approximately 157 cable systems, including 15 in the state of Wisconsin – and all of those are offering the Big Ten Network on their expanded basic lineup and none of them is charging anything extra to subscribers.

Unfortunately, the two major cable carriers in Wisconsin – Time Warner and Charter -- have chosen to not carry the Big Ten Network. (It's important to note that our local contacts at both those companies have long been supportive of Badger Athletics. Many of the employees of those companies are Badger fans; many are graduates of UW-Madison or have children, friends and relatives who attend or have attended UW-Madison. They are Badger fans who recognize the importance of carrying the Big Ten Network and who understand the unprecedented demand for television coverage of Badger Athletics in this community. Unfortunately, the decision to not carry the network is being made in places other than Madison and Milwaukee.)

We've heard from cable company spokespersons that the Big Ten Network is too expensive. If small cable companies in Wisconsin like Mt. Horeb Telephone Co. or Tech Com in Richland Center or Vernon Telephone Cooperative in Westby can negotiate a price that is acceptable, why can't Charter and Time Warner do the same?

We've heard from the cable companies that the Big Ten Network does not belong on expanded basic cable, and that their customers shouldn't have to pay for a channel that they may not watch. We simply ask that you review the lineup of 70 or so channels that are currently included on your expanded basic package with Charter and Time Warner, and we think you'll agree that the Big Ten Network would be among the more popular channels in that lineup. And again, if the 15 smaller cable operators, Direct TV and Dish are placing it on expanded basic, why can't Charter and Time Warner?

We've heard cable spokespersons say that you don't need to get the Big Ten Network because all the good games are on ABC, ESPN and other stations already on their expanded basic. We would suggest that Badger fans don't need to be told by the cable companies what games are "the good games." Most Badger fans would agree that the good games are those in which the Badgers play. Saturday's game against Ohio State is a perfect example of that.

We've also heard that there's really no good reason to have the Big Ten Network and that the Big Ten and all of its schools should have kept things the way they were. First of all, many of us have been around here long enough to remember when it was a struggle to get ANY game on television, much less an entire season of broadcasts. Also, don't forget that last year, three of our football games were broadcast on either ESPNU or ESPN360, with significantly limited distribution. And in men's basketball last year, four games were limited to ESPN360, one game was on CSTV and six other Badger games were not televised at all.

Please understand that the role of our athletic department, much like the local folks at Charter and Time Warner -- is limited. We believe strongly that we *are* doing *all* that we can to assist the Big Ten Network staff in their negotiations. But, simply put, until the major cable companies are willing to negotiate, our role in the process will remain extremely limited.

We've been asked often if there is anything you as Badger fans can do to help us work our way through this. Here are a few suggestions to consider:

First, when in discussion about this issue, please share the information in this letter. There are always two sides to a story, and we think the information in this letter can help counter some of the misinformation being put forth in the marketplace by those who don't want the Big Ten Network to succeed.

Second, if you are comfortable in doing so, we ask that you continue to try and contact your local cable provider and let them know that you want the Big Ten Network on your expanded basic lineup, and that even though you may have not made the switch to satellite, that doesn't mean you don't have an interest in the Big Ten Network and you want them to carry it. It really doesn't matter how you make that contact -- phone, e-mail or letter. Let them know that you're a Badger fan; remind them that they are the temporary holders of a municipally regulated cable franchise in your area and are obligated to respond to your community and its programming mandates.

Finally, please understand that most of you do have options. The Big Ten Network is available throughout Wisconsin on Direct TV and Dish Network. Switching from cable to satellite is not something that everyone wants to do, but it is available and it is an option to most households in Wisconsin. Increasingly, that is an option that is being acted upon. In the Madison area, for instance, we're told that nearly 30 percent now have satellite and that number continues to trend upward.

In summary, we feel strongly that a successful Big Ten Network is good for Wisconsin Athletics. It provides unprecedented marketing opportunities; a distinct recruiting advantage and a steady, guaranteed stream of incremental revenue over a 20-year period that will help Wisconsin remain a nationally competitive athletic department. It's a network about your student-athletes, your teams and your school.

We want to thank all of you who have contacted us in recent weeks. We hear your voices. We share your concerns. Please know that we will continue our efforts to bring broad distribution on the Big Ten Network to Badger fans in every corner of this great state of Wisconsin.

We thank you for your patience and for your continued support of Badger Athletics.

On Wisconsin!

John D. Wiley  
Chancellor

Barry Alvarez  
Director of Athletics

Walter Dickey  
UW Athletic Board Chair



November 16, 2007

TO: Barry Alvarez

FROM: John D. Wiley  
Chancellor 

RE: Memorandum of Agreement on Sharing of Big Ten Network Revenue

The Big Ten Conference media revenues are increasing by a substantial factor as a result of our agreements with Fox and formation of the Big Ten Network (BTN). The distribution to Wisconsin from the guaranteed minimum royalties from the Fox agreement will be \$6.125 million annually beginning in 2007-08.

No other athletic conference is in a position to realize this magnitude of media revenue. Consequently, the Big Ten is in a unique situation that has enormous positive potential, but we also don't want to encourage an athletics "arms race" through rapid, unilateral escalation of salaries and new facilities. Therefore, it will be important for Athletics to be able to show how the enhanced revenues have been used to improve academic performance of student-athletes and enhance facilities in non-revenue sports.

Beyond the above considerations, it is impossible to separate athletic success and revenue generation from the university as a whole: Athletics trades on and benefits from the overall institutional reputation and success, just as it contributes to those things. A large part of the market value of the BTN is the extraordinary number and distribution of our alumni nationwide. For these reasons, it will be important for the enhanced revenues to benefit both Athletics and the fans/future alumni directly.

For all these reasons, it is important to set out principles for the distribution of media revenues, an agreed methodology for implementation, and provisions for periodic review, especially if and when agreed thresholds are reached.

As principles, I propose the following:

1. First call on BTN revenues should be to fund one FTE position for a campus liaison to be our main point of contact with the Athletic Department and the BTN operations, and for production costs associated with BTN programming.

2. The balance should be divided appropriately between the Athletic Department and campus. In setting the division ratio, the following considerations should apply:
  - a. The campus portion should be used to support major, campus-wide priorities that maximize support and bring tangible benefits to broad constituencies. Examples include need-based student financial aid and the library system.
  - b. The Athletic Department portion should be used to support the department's strategic plan, including, specifically, student academic success, competitiveness in all sports, and timely completion of scheduled facilities upgrades. Special care should be taken, however, to make sure there is no fueling of an arms race by rapid escalation of salaries or by dramatically increased or unbalanced spending on the revenue sports. In addition, the Athletic Department should use this opportunity to secure its future fiscal health by (where possible) allowing existing endowments to grow in the UW Foundation through lower rates of drawdown.
  - c. The revenue should NOT be seen as an opportunity to increase the rate of spending simply because the funds appear to be there to do so. As large as the revenue increase is, it is still not nearly large enough to offset donor funding or other revenues.
3. It is in the interest of both campus and the department that the enhanced media revenues enable us to satisfy the principles outlined above for the benefit of both parties. Therefore, nothing in any signed agreement should be construed as being inappropriate for renegotiation at any time.

With these principles in mind, I propose the following implementation, which will satisfy all stated principles:

1. First, take \$250,000 to cover initial production costs and salary and benefits for a campus liaison to BTN, which will be an appointment in the campus office of University Communications, reporting through the director to the Chancellor's Office. The Athletic Department's liaison will serve as the primary contact to BTN. The campus liaison will work directly with the Athletic Department liaison to deliver support and services to BTN. If this amount proves inadequate or excessive, it can be adjusted in future years. There are other ways we could propose meeting these costs, but this is the way nearly all other Big Ten schools are handling this arrangement.
  2. Distribute 70 percent of the remainder to Athletics and 30 percent to campus.
  3. From the campus share of revenues, we will fund need-based scholarships and the General Library System.
-

4. Inflation of both athletic and campus expenses will not be indexed in advance, but must be handled within the growth of the media revenue stream.
  5. Any Channel revenues above the guaranteed gross minimum amounts will be divided between Athletics and campus, with two-thirds going to Athletics and one-third to Campus.
  6. I propose that the first-year signing bonus of approximately \$3 million should be split two-thirds for Athletics and one-third for campus, following the principles for use described above.
  7. Trademark Licensing revenues above the cost of administering the program will continue to be shared equally between campus and the Athletic Department.
-

Big Ten Network Distribution  
November 16, 2007

		FY08 Sharing-BTN
Guaranteed Revenue from BTN		6,125,000
Less: Channnel Related		250,000
Net Revenue Balance to be Distributed		5,875,000
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Percentage of Net BTN Revenue to Campus	30%	1,762,500
Distributed to Student Financial Services (75%)		1,321,875
Distributed to Library System (25%)		440,625
Balance of BTN Revenue Available to Campus (after distributions)		0
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Percentage of Net Revenue to Athletics	70%	4,112,500
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ILLINOIS INDIANA IOWA MICHIGAN MICHIGAN STATE MINNESOTA NORTHWESTERN OHIO STATE PENN STATE PURDUE WISCONSIN

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**MEMORANDUM**

**DATE:** April 12, 2006  
**TO:** Council of Presidents/Chancellors  
**FROM:** Jim Delany  
**SUBJECT:** The Big Ten Channel – Assignment of Rights

I am enclosing duplicate execution copies of the Assignment of Rights to be signed by each member institution as required by the Agreement that the Big Ten executed with Fox to form and operate The Big Ten Channel. I am also enclosing an Executive Summary of the Assignment of Rights.

As I stated in my March 31 memorandum to you on this subject, the Agreement contains two conditions to make it binding on the Big Ten and Fox:

1. The COP/C must approve the Agreement by April 15; and
2. The Conference must receive the Assignment of Rights from each member institution by May 15.

The enclosed documents relate to the second condition above. As you will note, I have already signed both enclosed copies of the Assignment of Rights. Please (a) sign both copies of the Assignment of Rights where indicated and (b) return one executed document to my office in the envelope provided as soon as possible, hopefully by May 1, 2006, but in no event later than May 15, in order to satisfy the condition in the Agreement with Fox. The second executed document is for your files.

We are in the process of receiving this week the signed Board of Directors resolution from each member of the COP/C, which is the first condition above, as the deadline for approval is this Saturday, April 15. If you have not signed and forwarded that resolution to me, I urge you to do so immediately so that I will receive it this week by the April 15 deadline.

Enclosures

## EXECUTIVE SUMMARY OF ASSIGNMENT OF RIGHTS

### Rights Granted to Conference by Member Institution

- **Games:** Exclusive rights to telecast or otherwise distribute all home games in all sports
  - Rights to hockey games are subject to existing agreements between Member Institutions and CCHA and WCHA. These rights will belong to the Channel if the current hockey relationships end. Under the *status quo*, the Channel would still like to telecast hockey games if they become available.
- **Ancillary Programming:** Rights to all pre- and post-game shows, weekly highlight shows, coaches' shows and season preview and review shows (subject to Member Institution retained rights discussed below)
  - The Channel has exclusive rights to distribution outside the Member Institution's home state and inside the Big Ten region
  - The Channel has non-exclusive rights to distribution inside the Member Institution's home state (subject to Member Institution's exclusive first-run rights)
  - The Channel has non-exclusive rights to distribution outside the Big Ten region
- **Archive Rights:** Access to production feeds and usage rights to all past game and highlight footage owned or controlled by the Member Institution

### Rights Retained by Member Institution

- **Games:** All games, other than football and men's basketball games, not selected for distribution by the Channel or by ABC/ESPN will be sublicensed back to the Member Institution
  - Member Institution may distribute such games by local broadcast station, institutional programming service (on-campus television) or the Member Institution's official website
  - Any other distribution (e.g., national or regional cable distribution) subject to prior approval of the Channel in light of the Channel's distribution strategy to maximize the value of the Channel
  - Selection procedures TBD
- **Ancillary Programming:** Member Institution may produce or license for production coaches' shows and other school-specific programming (e.g., weekly highlight shows and season-in-review shows)

- Exclusive first run distribution within the Member Institution's home state (including minimal spill-over into other markets within the broadcast/telecast territory of the local broadcast station/regional network) and thereafter non-exclusive replay rights within Member Institution's home state
- Non-exclusive outside the Big Ten region

• **DVDs:**

Non-exclusive right to produce and distribute, by DVD or similar home video product, game highlights and season-in-review shows

- Royalty-free right to use Channel game and highlight footage
- Retain all revenues from sale of DVD or home videos
- Consult with Channel prior to entering into agreement for third party production of DVD or home videos

• **Radio Rights:**

All radio rights by any and all means (e.g., traditional or internet)

**Other Provisions**

- **Effective Date:** July 1, 2007
- **Term:** 20 years, subject to one 5-year extension
- **Transition:** Subject to CSTV rights that are scheduled to expire on June 30, 2008 (subject to FNFR rights)
- **Away Games:** Member Institution will use commercially reasonable efforts (at no cost to Member Institution) to obtain access to feed of each football and men's and women's basketball non-conference away game
- **Big Ten/ACC Challenge:** Member Institution agrees to participate in the Big Ten/ACC Challenge each year
- **Non-sports Programming:** The Channel will telecast 60 hours per Member Institution per year of non-sports programming produced by the Member Institution (academic, charitable, cheerleading, etc.)
- **Contracting Authority:** The Conference is the authorized party to negotiate and execute telecast and distribution agreements
- **Marks/Logos:** The Channel and ABC/ESPN will have the reasonable use of a Member Institution's marks and logos to promote the games and ancillary programming
- **Copyright:** The Conference will own and control the copyright to all games and ancillary programming

**AMENDED AND RESTATED  
EXTENSION AND ASSIGNMENT AGREEMENT**

**THIS AMENDED AND RESTATED EXTENSION AND ASSIGNMENT AGREEMENT** (this "Assignment") is made as of the 1<sup>st</sup> day of May, 2006, between **THE BIG TEN CONFERENCE, INC.** (the "Conference") and **UNIVERSITY OF WISCONSIN**, one of the Conference's member institutions (the "Member").

WHEREAS, each of the eleven member institutions of the Conference has previously assigned to the Conference, by Extension and Assignment dated September 1, 1997 (the "1997 Assignment"), all of the right, title and interest to telecast each such member institution's football, men's basketball, women's basketball and volleyball games through May 1, 2010; and

WHEREAS, the Conference and each of its member institutions now desire hereby to amend and restate the 1997 Assignment in order for the member institutions to assign to the Conference certain rights to telecast and distribute games in all varsity sports and related ancillary programming as well as to agree to certain other matters relating to such telecasts and programming, all as more fully set forth below;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements set forth below, the parties hereto hereby agree as follows:

1. The Member acknowledges and agrees that the Conference has the sole authority to negotiate and execute, on behalf of the Conference and its member institutions (including without limitation the Member), agreements relating generally or specifically to the telecast and distribution rights to the Games (as defined below), Ancillary Programming (as defined below), college bowl association agreements and Conference tournaments and championship events.

2. The Member hereby assigns to the Conference for the term of this Assignment all of the right, title and interest that the Member, directly or indirectly, has or may hereafter acquire to telecast or distribute, live or delayed, throughout the universe, in any and all markets, in any and all languages and via any and all forms of media and methods of distribution and distribution technology, now existing or hereafter developed (including without limitation, over-the-air television, cable television, IPTV, satellite television, closed circuit television, broadband, wireless, VOD/SVOD, HDTV, interactive, online/Internet, mobile, pay-per-view, video downloads (such as iPods), DVD or other similar home video products, or video games but excluding radio and forms of radio distribution) (collectively, "Telecast or Distribute") the following:

(a) Exclusive rights to Telecast or Distribute all of the Member's varsity athletic games, matches, contests or events that relate to the Member's such games, matches or contests (such as Spring football scrimmages, "Midnight Madness" basketball practices or other public events relating to a varsity athletic team) (collectively, the "Games") that are played or occur at the Member's home venue (which will include certain neutral site Games both in and out of the Big Ten Region (as defined below)) during the term of this Assignment. Notwithstanding the foregoing, the rights relating to any hockey Games are subject to existing

agreements (and applicable extensions or renewals) between the Member and the Central Collegiate Hockey Association or the Western Collegiate Hockey Association, as applicable;

(b) Exclusive rights to Telecast or Distribute all "shoulder programming," including without limitation all preview shows, pre- and post-Game shows, intermission shows, weekly highlight shows, coaches' shows and review shows, produced by the Conference, the Member or any licensee of the Conference or the Member during the term of this Assignment (collectively, "Ancillary Programming"); provided, however, such rights to Telecast or Distribute Ancillary Programming produced by the Member or a licensee of the Member shall be exclusive to the Conference for distribution outside of the Member's home state and otherwise within the Big Ten Region (which includes, for purposes of this Assignment, the states of Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio, Pennsylvania and Wisconsin and, if the Conference expands during the term of this Assignment to include a new member institution(s) that is(are) located in a state(s) other than one of the states listed above, then such additional state(s)) and shall be non-exclusive to the Conference for distribution within the Member's home state (subject to exclusive first-run distribution rights granted by the Member for Ancillary Programming within the Member's home state) and outside of the Big Ten Region; and

(c) Access to production feeds and usage rights to Game and Game highlight footage owned or controlled by the Member relating to Games that occurred prior to the Effective Date (as defined below).

The Conference may license to third parties the above rights to Telecast and Distribute. In addition, the above rights shall include the exclusive right to sell all advertising inventory and retain all revenues in connection therewith relating to the Games and the Ancillary Programming (with the exception of any Declined Game (as defined below) and any Ancillary Programming produced by or on behalf of the Member, it being the understanding that the Member shall have the right to sell advertising inventory and retain all revenues for Declined Games and Ancillary Programming produced by or on behalf of, and distributed by, the Member and that the Conference shall have the right to sell advertising inventory and retain all revenues for replays of such Declined Games and Ancillary Programming that the Conference elects to Telecast or Distribute.)

3. Notwithstanding any provision of paragraph 1 or 2 above to the contrary, the Conference and the Member acknowledge and agree that the Member shall retain the following rights:

(a) Any Game(s) (other than a football or men's basketball Game) not selected for production and distribution under the agreements entered into by the Conference to Telecast or Distribute the Games (a "Declined Game") shall be available via sublicense to the Member for the Member's production and distribution within the Member's home television market by a local broadcast station licensee or institutional programming service (*i.e.*, on-campus television station) or via the Member's official institutional website, subject to the applicable terms and conditions as may exist in such agreements; provided, however, that any other distribution by the Member or licensee of the Member (*e.g.*, national or regional cable distribution) shall be subject to the approval of the Conference, in its sole discretion;

(b) The Member may produce, or license for production, Ancillary Programming consisting of its coaches' shows and other Member-specific sports programming and distribute or license for distribution such Ancillary Programming (including exclusive first-run distribution) within the Member's home state (including minimal spill-over into other markets within the broadcast/telecast territory of the local broadcast station/regional network) and may distribute or license for distribution such Ancillary Programming on a non-exclusive basis outside of the Big Ten Region; and

(c) The Member shall have the non-exclusive right to produce and commercially distribute or license the production and commercial distribution of, via DVD or similar home video product, Game highlights and season-in-review shows of the teams of the Member and shall be entitled to retain all revenues with respect thereto. The Member shall have the royalty-free right to use Game and Game highlight footage owned or controlled by the Conference in connection with such DVD or home video product produced by the Member. The Member agrees to consult with the Conference or the Conference's licensee with respect to production of such DVD or home video product prior to entering into any agreement with a third party for such production or the commencement of any such production by the Member itself.

4. The Member shall use commercially reasonable efforts to obtain the right, on behalf of the Conference, to access, for purposes of allowing the Conference, or its designee, to Telecast or Distribute, a feed or split feed of each non-Conference football, men's basketball and women's basketball Game played at a facility at which the Member is designated as the visiting team. If such rights are acquired by the Member, such rights are hereby automatically assigned to the Conference, which shall have the right to license such rights to a third party. In the event there is any financial cost to acquire the above-referenced rights to any non-Conference football or men's basketball games, the Member shall notify the Conference and the Conference shall have the option to assume such cost for such rights; provided, however, that the Member shall not be required to assume any such cost on behalf of the Conference.

5. The Conference shall have the royalty-free right to the reasonable use of, and the right to authorize third parties with whom the Conference enters into agreements to Telecast or Distribute the Games and Ancillary Programming to the reasonable use of, the Member's logos and marks to promote the Games and the Ancillary Programming in connection with the Conference's rights to Telecast or Distribute as set forth in this Assignment.

6. If the Big Ten/ACC Challenge series is played in any year during the term of this Assignment, the Member agrees to cause its men's basketball team to participate in such series and shall not schedule non-conference men's basketball games in such a manner as to preclude the Member's participation therein.

7. Subject to paragraph 10 below, this Assignment shall be binding upon the Conference and the Member immediately upon the execution hereof by the respective parties and shall amend, restate and supersede the 1997 Assignment between the Member and the Conference. This Assignment shall be effective as of July 1, 2007 (the "Effective Date"), and shall terminate on June 30, 2027, unless otherwise terminated or extended by mutual agreement of the Conference and its member institutions; provided, however, that in the event the rights

agreement for the proposed Big Ten Channel is extended to June 30, 2032, in accordance with its terms, then this Assignment shall terminate on June 30, 2032.

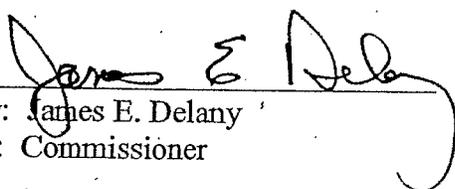
8. The Conference agrees to negotiate and enter into agreements to Telecast or Distribute the Games and Ancillary Programming. The Conference further agrees to distribute to the Member (and the other member institutions) revenues derived from such agreements in excess of related expenses and assessments (including without limitation any cross-over payments) in accordance with the Conference's policies as determined from time to time by the Board of Directors of the Conference.

9. The Member assigns to the Conference any and all rights of the Member to own, control or otherwise use the copyright to the Games (including without limitation all Declined Games) and Ancillary Programming; provided, however, the Member shall have all such necessary usage rights to produce, telecast and distribute the Games and Ancillary Programming as permitted under paragraph 3 above.

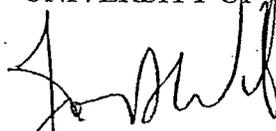
10. Notwithstanding any provisions of paragraph 7 above to the contrary, in the event that less than all of the current member institutions of the Conference execute an amended and restated extension and assignment in the same form as this Assignment, this Assignment will be voidable at the option of the Member, which option may be exercised by written notice to the Conference within sixty (60) days of the Member's learning that one or more member institutions of the Conference are unwilling to execute such an amended and restated extension and assignment in this form. In the event that the Member exercises its right to void this Assignment pursuant to this paragraph 10, then the 1997 Assignment between the Member and the Conference shall automatically be reinstated and remain in full force and effect pursuant to its terms.

IN WITNESS WHEREOF, the parties have caused this AMENDED AND RESTATED EXTENSION AND ASSIGNMENT to be executed by their duly authorized representatives as of the date first written above.

THE BIG TEN CONFERENCE, INC.

  
By: James E. Delany  
Its: Commissioner

UNIVERSITY OF WISCONSIN

  
By: John D. Wiley  
Its: Chancellor



# Multichannel News

## November 14, 2007

### Big Ten, Time Warner Still Locked At Scrimmage Line

#### Parties Hold Firm To Their Carriage Positions During Sports Panel Discussion

-- *Multichannel News*, 11/14/2007 11:33:00 AM

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

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

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

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

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

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

Otherwise, the parties mostly agreed to disagree.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



## Venskus, Katy

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**From:** Thomas E. Moore [temoore@chartermi.net]  
**Sent:** Wednesday, November 14, 2007 8:52 AM  
**To:** 'Thomas E. Moore'; Sen.Breske; Gallagher, Adam; Piliouras, Elizabeth; Meinholz, Susan; Brady, Kevin; Sen.Carpenter; Schwantes, Nathan; Ewy, Stuart; DeLong, Russell; Sen.Coggs; Williams, Jana; de Felice, David Patrick; Weinglass, David; Plotkin, Adam; Sen.Cowles; Summerfield, Craig; Frings, Roger; Sen.Darling; Volz, David; Schulze, Connie; Hogan, John; Risch, Jay; Davis, Andrew; Sen.Decker; Lynch, Carrie; Worcester, Barbara; Walsh, Patrick; Warren, Linda; Nelson, Lynn; Boerger, Michael; Reetz, Kay; Schultz, Kurt; Sen.Erpenbach; Johnson, Kelly; Doeckel, Robert; Knutson, Tryg; Esser, Bridget; Laundrie, Julie; Sen.Fitzgerald; Klein, Jonathan; Murray, Ryan; Gilkes, Keith; Ottman, Tad; Liedl, Kimberly; Block, Cindy; Sen.Grothman; Kolbow, Regina; Churchill, Jolene; Emerson, James; Sen.Hansen; Wadd, Jay; Wagnitz, John; Lundquist, Jessica; Sen.Harsdorf; Fladeboe, David; Jablonski, Jack; Woebke, Matt; Sen.Jauch; Stephens, Liz; Kahn, Carrie; Saarinen, Katie; Kanninen, Dan; Sen.Kanavas; Lundie, Shawn; Nelson, W. Scott - Legislature; Duerkop, Nathan; Sen.Kapanke; Perlich, John H.; Smyrski, Rose; Gustafson, Andrew; Sen.Kedzie; Phillips, Matt; Johnson, Dan; Hough, Michelle; Sen.Kreitlow; Saxler, Charles; Pagel, Matt; Daggs, Kathy; Sen.Lasee; Van Ess, Thomas; Esser, Eric; Esser, Jennifer; Sen.Lassa; Kelly, Jessica; Supple, Ryan; Wilson, Danielle; Sen.Lazich; Fischer, Kevin; Sieg, Tricia; Beard, Paul; Sen.Lehman; Browne, Michael; Rylander, Thomas; Dauscher, Sara; Stromme, Denise; Sen.Leibham; Werwie, Cullen; Stephenson, Sean; Gasper, Greg; Sen.Miller; Bier, Beth; Farley, Becca; Kramer, Zac; Kuhn, Jamie; Anderson, John; Sen.Olsen; Pluta, Mary; Smith, Heather; Bruce, Cory; Hogan, Rebecca; Boario, Mary Ellen; Sen.Plale; Anderson, Mark; Oechsner, Jennifer; Hodgson, Amber; Venskus, Katy; Sen.Risser; Webendorfer, Wes; Briganti, Sarah; Tuschen, Terry; Cieslewicz, Dianne; Sen.Robson; Flury, Kelley; Wescott, Joshua; Sargent, Justin; Gratz, Nadine; Engel, Andrew; Beilman-Dulin, Joanna; Shannon-Bradley, Summer; Dicks, Helen; Sen.Roessler; Huneywell, Robert; Wagner, Mike; Asbjornson, Karen; Sen.Schultz; Jackson, Tom; Schoenfeldt, Eileen; Klein, Jonathan; Jorgensen, Leslie; Leighton, Kyle; Hudzinski, Nicole; Swentkofske, Matthew; Rosser, Lewis; Sen.Taylor; Edwards, Tonya; Enwemnw, Madu; Peterson, Eric; Charles, Alan; Bryant, Michelle; Sen.Vinehout; Haber, Darcy; Luchterhand, Ken; Kleinschmidt, Linda; Nilsestuen, Joel; Sen.Wirch; Tierney, Michael; Erickson, Pat; Bishop, Jennifer; McGuire, Paula

**Subject:** [Possible Spam] RE: Please do not support the "FAN" bill draft circulating

**Importance:** Low

\*I apologize if you received this multiple times. We are having server problems\*

Today, your office received the Co-Sponsorship listed below regarding the "Fair Access to Networks" bill draft being circulated (LRB-3406).

On behalf of Wisconsin's Cable operators – large and small operators throughout Wisconsin – I would respectfully ask you to NOT Co-Sponsor this bill draft without at least discussing the issue with your local cable operators.

Here are some points to consider:

- 1) This bill draft would insert the State of Wisconsin into the ongoing negotiations between cable operators and the National Football League and/or the Big Ten conference and their co-owner

the Fox corporation. Remember, until the NFL began trying to charge fans for games, every Green Bay Packer game was available free to Wisconsin viewers with a TV and an antenna. It is the NFL network which decided to hold back several games a year in order to extract additional revenue from fans. Cable operators want to carry the NFL and Big Ten Networks, but under terms which will provide value to cable customers.

- 2) Without question, the result of this bill would be HIGHER CABLE PRICES for consumers. Why? Cable programmers like the NFL and BTN charge cable operators a fee based on each customer who has their programming available whether the customer watches the programming or not. According to press reports, both the NFL and BTN are charging some of the highest fees of any cable programming. Both the NFL and BTN are demanding cable operators put the programming on the "expanded basic" programming tier so that the networks are paid the revenue associated with the expanded basic customers. Under those terms, virtually all Wisconsin cable customers would end up paying for the expensive programming whether they are sports fans or not.
- 3) The cable operators serving Wisconsin are trying very hard to have this programming available to our customers on terms which are in the interests of all our customer base. As reported in multiple national and local press accounts, companies like Charter Communications, Time Warner Cable and Comcast Cable have repeatedly offered to put the channels on a sports programming tier. The NFL and BTN networks refuse cable operators the rights to carry the networks on a sports tier.
- 4) Cable operators have heard from a significant portion of their customers who do not want the NFL or BTN networks and don't want to have their cable prices affected by adding these networks on the expanded basic tier. Cable operators who are holding out to negotiate the best terms for all their customers should not have this legislative "gun" held to their head.
- 5) This bill would not only apply to the NFL or BTN networks but would establish a flawed precedent for *any* programmer entering the marketplace. For example, under this legislation you could see the same demands from a Mountain West, Missouri Valley or the Atlantic Sun Conference should they follow the BTN's example. Why stop at sports programming? Any number of programmers of any kind could take advantage of this legislation.
- 6) Please let the market place – not the state government – decide the winners and losers in this ongoing negotiation.

I welcome discussion on this issue. If you have any questions, please do not hesitate to contact me.

Tom Moore, Executive Director  
WI Cable Communications Association  
22 East Mifflin Street, Ste. 1010  
Madison, WI 53703  
(608) 256-1683  
(608) 256-6222 f  
[temoore@chartermi.net](mailto:temoore@chartermi.net)

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**From:** Rep.Rhoades  
**Sent:** Tuesday, November 13, 2007 2:51 PM  
**To:** \*Legislative Assembly Republicans; \*Legislative Assembly Democrats; \*Legislative Senate Democrats; \*Legislative Senate Republicans  
**Subject:** Hansen & Rhoades/Co-Sponsor/LRB-3406/Fair Access to Networks (FAN) Legislation/DEADLINE THIS THURSDAY AT 5:00!  
**Importance:** High

## **NOTE: SHORT DEADLINE on "Fair Access to Networks" (FAN) Legislation!!!**

**TO:** All Legislators  
**FROM:** Sen. Dave Hansen  
Rep. Kitty Rhoades  
**RE:** Co-Sponsorship of LRB-3406/1, relating to: **arbitration in situations involving cable operators and creators of cable programming/"Fair Access to Networks" (FAN) legislation**

**DEADLINE: November 15, 2007**

*If you would like to co-sponsor this legislation, please contact Eric Schutt in Rep. Rhoades' office via e-mail or at 6-1526 or contact Jay Wadd in Sen. Hansen's office via e-mail or at 6-5670 before 5:00 p.m. this Thursday, November 15th.*

As you all know, the NFL Network and the Big Ten Network have been unable to reach a solution with the major cable companies that will allow Wisconsin sports fans to access televised sporting events that are carried on those networks.

Consequently, Packers fans living outside of Green Bay and Milwaukee who are cable subscribers will be unable to view the Packers/Cowboys game in their own homes on November 29th and UW Alumni and Badger fans will be unable to watch a number of Badger/NCAA sporting events in the months to come.

It is also possible that if a resolution is not found, cable subscribers will be unable to watch the Badgers' Bowl Game as well.

While the negotiations have focused around such issues as channel placement and compensation, one of the most important elements of the discussion has been left out: the fans.

As a result, we are introducing "**Fair Access to Networks" (FAN) legislation**. This bill would allow parties to the negotiation to seek arbitration from an independent arbitrator: the American Arbitration Association.

This bill **DOES NOT** force the networks or cable channels to do anything nor does it require the cable channels to take action regarding which programming they provide. What this legislation does do is return the needs of the fans to the debate by providing a mechanism at which to reach an agreement.

The LRB Analysis is provided below:

This bill allows a person who creates video programming for cable television systems to seek arbitration if that video programming creator believes that a cable operator has not treated the video programming creator in a fair, reasonable, and nondiscriminatory manner concerning the proposed amount to be paid for the addition or renewal of a cable channel to the cable operator's cable television system. The video programming creator must give the cable operator notice of the intent to seek arbitration. If the parties do not resolve the dispute within 10 days after the notice is sent, either party may file a written request for arbitration with the American Arbitration Association. Each party then submits their final offer regarding the addition or renewal of a cable channel to the arbitrator chosen by association. If one of the parties does not submit a final offer, the arbitrator may only consider information provided by the other party when making his or her decision.

The arbitrator may require the parties to submit additional evidence, but he or she may not share the evidence submitted by one party with the opposing party. The arbitrator may not review any offers made by the parties other than their submitted final offers. The arbitrator must choose the proposed amount to be paid by the cable operator for the addition or renewal of the disputed cable channel that most closely approximates the fair market value of that disputed cable channel. In addition, the arbitrator must choose the remaining terms and conditions of the final offer that the arbitrator determines is the most reasonable.



## Venskus, Katy

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**From:** Thomas E. Moore [temoore@chartermi.net]  
**Sent:** Wednesday, December 12, 2007 1:39 PM  
**To:** 'Thomas E. Moore'; Sen.Breske; Gallagher, Adam; Piliouras, Elizabeth; Meinholz, Susan; Brady, Kevin; Sen.Carpenter; Schwantes, Nathan; Ewy, Stuart; DeLong, Russell; Sen.Coggs; Williams, Jana; de Felice, David Patrick; Weinglass, David; Plotkin, Adam; Sen.Cowles; Summerfield, Craig; Frings, Roger; Sen.Darling; Volz, David; Schulze, Connie; Hogan, John; Risch, Jay; Davis, Andrew; Sen.Decker; Lynch, Carrie; Worcester, Barbara; Walsh, Patrick; Warren, Linda; Nelson, Lynn; Boerger, Michael; Reetz, Kay; Schultz, Kurt; Sen.Erpenbach; Johnson, Kelly; Doeckel, Robert; Knutson, Tryg; Esser, Bridget; Laundrie, Julie; Sen.Fitzgerald; Klein, Jonathan; Murray, Ryan; Gilkes, Keith; Ottman, Tad; Liedl, Kimberly; Block, Cindy; Sen.Grothman; Kolbow, Regina; Churchill, Jolene; Emerson, James; Sen.Hansen; Wadd, Jay; Wagnitz, John; Lundquist, Jessica; Sen.Harsdorf; Fladeboe, David; Jablonski, Jack; Woebke, Matt; Sen.Jauch; Stephens, Liz; Kahn, Carrie; Saarinen, Katie; Kanninen, Dan; Sen.Kanavas; Lundie, Shawn; Nelson, W. Scott - Legislature; Duerkop, Nathan; Sen.Kapanke; Perlich, John H.; Smyrski, Rose; Gustafson, Andrew; Sen.Kedzie; Phillips, Matt; Johnson, Dan; Hough, Michelle; Sen.Kreitlow; Saxler, Charles; Pagel, Matt; Daggs, Kathy; Sen.Lasee; Van Ess, Thomas; Esser, Eric; Esser, Jennifer; Sen.Lassa; Kelly, Jessica; Supple, Ryan; Wilson, Danielle; Sen.Lazich; Fischer, Kevin; Sieg, Tricia; Beard, Paul; Sen.Lehman; Browne, Michael; Rylander, Thomas; Dauscher, Sara; Stromme, Denise; Sen.Leibham; Werwie, Cullen; Stephenson, Sean; Gasper, Greg; Sen.Miller; Bier, Beth; Farley, Becca; Kramer, Zac; Kuhn, Jamie; Anderson, John; Sen.Olsen; Pluta, Mary; Smith, Heather; Bruce, Cory; Hogan, Rebecca; Boario, Mary Ellen; Sen.Plale; Anderson, Mark; Oechsner, Jennifer; Hodgson, Amber; Venskus, Katy; Sen.Risser; Webendorfer, Wes; Briganti, Sarah; Tuschen, Terry; Cieslewicz, Dianne; Sen.Robson; Flury, Kelley; 'Joshua Wescott'; Sargent, Justin; Gratz, Nadine; Engel, Andrew; Beilman-Dulin, Joanna; Shannon-Bradley, Summer; Dicks, Helen; Sen.Roessler; Huneywell, Robert; Wagner, Mike; Asbjornson, Karen; Sen.Schultz; Jackson, Tom; Schoenfeldt, Eileen; Klein, Jonathan; Jorgensen, Leslie; Leighton, Kyle; Hudzinski, Nicole; Swentkofske, Matthew; Rosser, Lewis; Sen.Taylor; Edwards, Tonya; Enwemwa, Madu; Peterson, Eric; Charles, Alan; Bryant, Michelle; Sen.Vinehout; Haber, Darcy; Luchterhand, Ken; Kleinschmidt, Linda; Nilsestuen, Joel; Sen.Wirch; Tierney, Michael; Erickson, Pat; Bishop, Jennifer; McGuire, Paula  
**Subject:** [Possible Spam] WI Poll 71% oppose government involvement in NFL BTN Cable dispute  
**Importance:** Low

In case you missed the results reported on Friday in WisPolitics, **71% of Wisconsinites polled said the state should not get involved** in the ongoing issue regarding the NFL and Big Ten Network and several cable television providers.

Whatever your thoughts are on the issue, please keep in mind Wisconsin citizens appear to be opposed to the idea of state government becoming involved in the issue.

For more information, please follow this link, which is being used with permission from WisPolitics

<http://www.wispolitics.com/index.iml?Article=112720>

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

Tom Moore  
WI Cable Communications Association

12/12/2007

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Madison, WI 53703  
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Metropolitan Milwaukee  
Association of Commerce

**DATE:** DECEMBER 19, 2007  
**TO:** SENATE COMMITTEE ON COMMERCE, UTILITIES AND RAIL  
**FROM:** STEVE BAAS, GOVERNMENT AFFAIRS DIRECTOR  
**RE:** SB 343

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

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

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

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

###



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## United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*  
STEPHANIE A. MIDDLETON, *Republican Staff Director*  
NICHOLAS A. ROSSI, *Republican Chief Counsel*

December 19, 2007

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

Dear Commissioner Goodell:

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

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

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

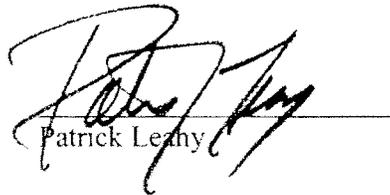
NFL Network, the eight games, will be available to fewer people than had those games been offered on broadcast television.”

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

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

Sincerely,

  
Arlen Specter

  
Patrick Leahy





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

James S. Haney  
President

James A. Buchen  
Vice President  
Government Relations

James R. Morgan  
Vice President  
Marketing & Membership

Michael R. Shoys  
Vice President  
Administration

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

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

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

### **Sports Fans Are Understandably Upset**

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

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

### **Sports Fans Have Alternatives**

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

### **More Alternatives Forthcoming**

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

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[www.wmc.org](http://www.wmc.org)

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

### **State Has No Business Meddling in a Private Commercial Dispute**

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

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

WMC respectfully urges you to oppose Senate Bill 343.

## WMC OFFICERS

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The Manitowoc Company, Inc., Manitowoc

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The Boldt Company, Appleton

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Prepared Remarks of Larry F. Darby  
Darby Associates – Washington, DC

Hearing before the Wisconsin State  
Senate Committee on Commerce, Utilities and Rail  
December 20, 2007

Good afternoon Mr. Chairman and members of the Committee. Thank you for the opportunity to talk with you about consumers' interests in markets for cable distribution and program production and, very importantly, the role of government in offsetting clear market imperfections. I was asked and agreed to focus on markets for cable programming and how current industry practices impact independent program producers and consumers.

Qualifications. My name is Larry Darby. I am an economic and financial analyst with a background government, academia, business and investment banking. I head a small consulting firm, Darby Associates, specializing in business and policy issues at the intersection of technology, law and markets. I was Senior Economist in the Executive Office of the President, then Chief Economist and Bureau Chief at the Federal Communications Commission before spending five years on Wall Street as VP in Lehman Brothers telecom investment banking group. I teach economics, finance, and regulation at the graduate level, consult to several public and private organizations, and have written extensively on information technology matters. I am on the board of the American Consumer Institute Center for Citizen Research, an institute committed to advancing consumer interests in public policy fora like this one. I am speaking today on behalf of myself. My work in these matters is supported by the NFL.

Overview of Statement. Senate Bill 343 invokes mandatory arbitration as a means of resolving carriage disputes between cable operators and independent program suppliers. The bill addresses a current market failure that reduces consumer welfare. My remarks will reflect my support for that general approach. In that context I will address the following questions.

- *What is the consumer interest in this legislation?*
- *Are markets for cable television services "workably competitive"?*
- *Do cable companies discriminate in favor of their own programs?*
- *Should government intervene on behalf of consumers?*
- *What are the merits of Final Offer Arbitration in this context?*

I will try to be brief in order to save time to respond to your questions.

Consumers have a substantial interest in this legislation. Consumers have a huge stake in cable programming. They spend a large share of their waking hours watching television. The Federal Communications Commission (FCC) reported that the average household in recent years has tuned into television for over 8 hours a day, while the average family member watches television about four and a half hours daily. Senior citizens and below average income households exceed these averages. According to the American Association for Retired Persons, senior citizens average five and a half hours per day. The FCC reports that more than half of this is cable program viewing time.

Consumers spend a significant share of their income on cable television services and television equipment. According to Consumer Expenditure Surveys done by the U.S. Bureau of Labor Statistics, spending per household on cable television service amounted in 2005 to about \$520 per year. Seniors age 65-74 spent even more. Average expenditure is well over 1% of average household income for all households and substantially more for households headed by seniors or below average income consumers. The average household spent another \$105 on television equipment. As measured by overall consumer expenditure, share of income, or time devoted to it, cable television programming is a high priority consumer service and vital to their individual and collective well-being.

Markets for cable television services are not yet “workably competitive”. The range of program choices available to consumers is now determined for the most part by cable companies that also own significant shares of the programming they carry. Congress has passed laws designed to make sure that Americans have access to diverse program sources and, in particular, to programming in which cable television companies do not have an economic interest. You will be told that “...the video market is fully competitive.” That is a talking point of the cable industry’s brief. But, before accepting it at face value, you should consider the facts that support, or in many cases, refute that categorical assertion.

There are two kinds of competition to cable systems – “intramodal” competition from other cable systems or “intermodal” competition from other technology platforms. There is very little “cable to cable competition” among rival cable companies. Cable systems have long been regarded as natural monopolies and few entrants have emerged to challenge incumbents with competing cable systems. In this context the FCC concluded categorically: “In the vast majority of communities, cable competition simply does not exist.” Very few consumers can choose between competing cable companies.

Other program delivery platforms and providers – satellite, telephone, utility company, and municipalities — can deliver content to consumers. *Some* are present in *some* markets for *some*

consumers. Some consumers do, but most American households do not, enjoy the option of choosing from them. Much is made of the existence of these platforms by advocates of the view that “Cable is fully competitive!” But the most recent data from the FCC indicates that an overwhelming majority of Americans still rely on cable as their video program provider. Approximately 65 million households, or almost 70% of those who subscribe to an MVPD (multichannel video programming distributor) service, are cable subscribers. Direct broadcast satellite companies capture nearly thirty percent. Other platforms, including those provided by telcos, power companies or municipalities account for about 3%. Wireless video over cellular systems will grow, but is now negligible. (Data from FCC 2006 Report on Media Competition.)

In support of claims that “Cable is fully competitive!” advocates cite the presence and plans of telephone companies in the video distribution market. But, the facts suggest more plans and prospects than telco presence in the marketplace. At the end of the third quarter of this year, the AT&T U-verse system was available to fewer than five percent of US homes and had captured only 125,000 subscribers, the great majority of which are in Texas. By the same date Verizon reported signing up 717,000 customers for its fiber-based video service. Efforts of municipalities and power companies are cited as competitors of cable. But, they address scattered markets and fewer than 1% of US households.

It simply is not true that local video markets are fully competitive or, in many instances, even workably so. Cable operators have market power over price, programming and service quality – market power that is neither checked, nor substantially altered, by competition from other MVPD services. Some Americans have a choice of video program distributors. Many do not.

Several independent studies establish the existence of cable market power in distribution and related benefits of more open entry and intermodal rivalry. Consumers consistently express a preference to be able to choose between services of both legacy monopoly cable and telephone providers. And, they vote with their dollars when provided that opportunity. Cable rates, when unrestrained by competition, tend to go up faster, and in many cases, much faster than prices for other goods and services. US Bureau of Labor Statistics data indicate that cable rates have increased in the past decade about two and a half times as fast as the overall rate of inflation. Cable subscribers in Wisconsin have been subject to similar exercises of cable operator power over price. A survey this year of about two dozen Wisconsin communities found cable increases well above inflation rates.<sup>1</sup>

Independent experts outside the cable industry agree that cable rates reflect market power and are higher where there are no wireline alternatives. Where there is competition, cable rates tend to flatten or

decline in the face of alternatives, while service quality and diversity improves as rivals vie for subscribers' favor.

*Cable firms discriminate against independent producers and in favor of their own programs.*

Large cable companies are vertically integrated into programming and are major providers of the content their systems offer. The FCC found in 2005 about 500 national programming networks. One in five was vertically integrated with one or more cable operators. Five of the top seven cable firms (Comcast, Time Warner, Cox, Cablevision, and Advance/Newhouse) held ownership interests in national program networks. Six of the top 20 non-broadcast video programming networks (ranked by subscribership) are vertically integrated with a cable operator. Of the 96 regional networks identified by the FCC, 44 networks (45.8 percent) were vertically integrated with at least one cable operator. Comcast has ownership interests in 14 (14.6 percent) regional networks. Cablevision has ownership interests in 13 (13.6 percent) regional networks. Time Warner has ownership interests in 10 (10.4 percent) regional networks. Cox has ownership interests in six (6.2 percent) regional networks.

Vertical integration may create efficiencies in production, distribution and marketing, but substantial downside costs are also well established in principle and practice. Drawing on a wealth of scholarly research, the FCC has concluded that detrimental effects of cable integration of program production and distribution "...can include unfair methods of competition, discriminatory conduct, and exclusive contracts that are the result of coercive activity."

The record is replete with largely uncontested indications of the exercise of market power by integrated cable/program suppliers via discrimination against independent program suppliers.<sup>2</sup> While differentiation in terms, product characteristics, prices and other elements of marketplace offers are commonplace and not *per se* objectionable, differentiation based solely, or substantially, on the affiliation of a customer or supplier, and without regard to comparative merits, is not in consumers' interest. It deprives them of options many would choose were they given the opportunity.

Economic discrimination by integrated cable operators takes both price and non-price forms of differentiation in terms offered affiliates vis-à-vis those offered independent program producers. Non-price discrimination involves imposition of "special" conditions on independent program suppliers, conditions that are not imposed on the operators' own program services.

According to testimony from numerous independent programmers, integrated cable operators frequently require independently produced programs, but not programs produced by affiliates, be substantially funded, "launched", or have other carriage agreements in place as conditions precedent to being carried on the cable network. Those requirements may be fatal, since investors like the comfort of carriage agreements covering a large subscriber base as a condition of providing financial support. Other discriminatory practices reported by independents include tiering or packaging that gives preferences to cable's own program affiliates. Independent programmers also report that cable operators insist on being awarded an equity stake in the subject programming as a condition of carriage.

To clarify the extent of price discrimination by integrated cable operators against independent program suppliers, we further analyzed evidence provided to the FCC by Hallmark Channel. The data compared fees paid by cable operators to different suppliers (an indicator of the value cable operators associated with the programming) to the Nielsen ratings for those same programming services (an indicator of public or consumer value assigned to the same programming). The differences establish the presence and scope of discrimination by Time Warner and Comcast in favor of their own affiliated programming services and against Hallmark programs.

Discrimination is reflected in a comparison of a) fees paid for and b) audience attracted by affiliated vs. nonaffiliated programming. The number of viewers is the major principal metric of the value of different programs. Consumers vote with their eyes. Although license fees need not reflect precisely the number of viewers, there is no reason to suppose that ownership of the programming should from a consumer perspective be a more important determinant of value than the audiences it attracts. Yet, that is precisely what the data suggest.

Hallmark Channel receives from cable operators, on average, three cents per cable subscriber for programming that is accorded by Nielsen a Prime Time Household rating of 1.1, which is defined by Nielsen as the "estimated percentage of the universe of TV households tuned to a program in the average minute." Concurrently (measured in April, 2007), Time Warner paid its CNN affiliate 44 cents (more than 14 times the average fee paid to Hallmark) for programming that attracted a Nielsen rating of 0.7. Thus, Time Warner paid its affiliate a fee 14 times greater for a prime time audience about 2/3 as great. Similarly, Comcast paid its affiliate (*G4 videogame tv*) twice as much for 20 percent of the audience attracted by Hallmark. Comcast paid its affiliated Golf Channel more than seven times the fee paid Hallmark for an audience less than twenty percent of Hallmarks' average prime time household viewers.

Most carriage agreements contain “most favored nation” clauses leading to price uniformity among major cable systems for a particular channel or program source. The Hallmark data are likely to reflect closely the structure and level of fees in carriage contracts for other independents. In short, the discrimination measured here appears to be a reasonable proxy for relations between integrated cable companies and other independent program suppliers.

The table below is derived from Hallmark data on fees paid for, and audiences attracted by, different program services. It shows first the results of dividing the average license fee paid to programmers by the program’s Nielsen audience rating. That is a proxy for price paid per viewer for different services. Secondly, it expresses these proxies for “prices paid per viewer” for different services as a multiple of the price paid to Hallmark, the independent, non-affiliated program supplier.

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**INDEX OF ANTICOMPETITIVE CABLE DISCRIMINATION**  
Payment for Affiliated Vs. Independent Programming

CHANNEL	Affiliation	Fee per Prime Time Rating Point	Prime Time Payment Multiple
TNT	TW	0.49	18X
CNN	TW	0.63	23X
TBS	TW	0.33	12X
Cartoon Network	TW	0.13	5X
Court TV	TW	0.08	3X
Golf Channel	Comcast	1.15	42X
E!	Comcast	0.50	18X
style.	Comcast	0.60	22X
G4 Video Game	Comcast	0.30	11X
Hallmark Channel	Independent.	0.03	1X

Source: Calculated by American Consumer Institute from Hallmark data submitted to the Federal Communications Commission.

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The last column indicates multiples of fees paid per viewer for affiliated programming versus fees paid per viewer for the independent programmer. In *all* cases the multiple exceeds three and ranges frequently into the twenties and beyond. The multiples indicate the premium paid to affiliates, but they are also an index of the degree of discrimination against non-affiliated programmers.

The differences in prices paid reflect the business objectives of the cable companies involved, *not* consumer valuations of the different programs.

Government should intervene on behalf consumers' interest in diverse programming. Recent studies of market data by competent, disinterested analysts of the structure, conduct and performance of cable system operators in markets for video program production and distribution are virtually unanimous on the question of cable market power over price and programming. It is fair to conclude from them that:

- There are serious imperfections in video program production and distribution markets;
- Market failures do now and will continue to impose costs on consumers;
- Regulatory and adjudicatory interventions are not adequate to protect consumers; and,
- Diversity and consumer choice in cable video programs being reduced substantially by market failures that are not fully offset by government action.

The basis for finding the incentive and ability of integrated suppliers to discriminate in the program market in ways that disserve consumers is diverse. Studies by the U.S. Government Accountability Office, FCC-sponsored studies, the FCC itself and scholars from academia, have found a) existence of cable firm market power, b) incentives for them to exercise it, and c) its actual exercise by vertically integrated cable systems in dealings with unaffiliated program suppliers.

Everywhere but in economics textbooks, firms have market power. Markets are never perfect. But, they need not be perfect, only that they work as well as or better than government planning and controls. Experience testifies loudly and clearly that well-meaning government remedies for market imperfections too often occasion side effects from unintended, unanticipated consequences whose costs dwarf any conceivable benefits.

Government's task here is one of harmonizing the imperfections of market processes with the infirmities of government interference in those processes. Inasmuch as government regulation is no sure antidote to market failure, your challenge is twofold: a) to identify the worst of market infirmities, and b) to apply only the most efficient, least-costly government remedies. I believe that final offer arbitration of the sort you are now considering is just such a remedy.

Final Offer arbitration is the solution to this market failure. It is an approach that has already been tried and by all indications has been quite successful. *Final offer* arbitration was adopted earlier by the FCC to resolve similar disputes between program distribution platform owners – both satellite and

cable networks – when it simply ordered the parties who are unable, for whatever reason, to forge program carriage agreements in private negotiations to submit to *final offer* arbitration.

There are several advantages to *final offer* arbitration compared to other forms of dispute resolution. The most notable is inherent in the incentive structure imposed on parties that heretofore were unable for whatever reason to reach an agreement. Disputants are impelled by the threat of failure to propose resolutions that are acceptable to them, rather than those that are most desirable. This fact alone brings the parties closer together.

*Final offer* arbitration eliminates differences in market power and financial resources between parties; it shortens the time needed to resolve disputes and hastens consumer receipt of benefits. It eliminates advantages to either party and costs to consumers, of delay, obfuscation, refusals to deal or bargain in good faith. Very importantly, *final offer* arbitration eliminates the exercise of buying power owing to one party's control over valuable assets – either distribution networks or specialized content – and helps to assure that consumers will not be forced to pay for the exercise of that power in the form of higher prices, lower quality programming and/or fewer options.

An ironic benefit of compulsory *final offer* arbitration is the prospect for diminished use of the process over time, as a result of firms finding it advantageous to negotiate settlements rather than to “roll the dice” and risk losing in an all-or-nothing gamble.

Knowledge of the results of previous arbitration combines over time yield *de facto* rules that effectively define “fair market value”; increases the prospect for successful negotiations; and, decreases the complexity of *final offer* arbitration if and when a party demands it.

Use of *final offer* arbitration requires fewer legal and other resources than typically used by other dispute resolution mechanisms. The process will benefit large and small independent programmers who are relieved of the need to meet difficult burdens of proof of discrimination that often require information to which they have no access in order to prove violations of the law by cable operators. *Final offer* arbitration shifts the focus of public policy to timely and economic solutions, and away from fault finding, proof, gaming regulatory processes and time-consuming litigation.

These and other advantages confer consumer benefits in the form of more timely resolution, lower cost, more certainty, more diversity, and, in the aggregate, greater sovereignty in program choice. That concludes my prepared remarks. Thank you again. I am happy to answer any questions.

## NOTES

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<sup>1</sup> Rate changes in selected Wisconsin markets are summarized below. They are available online at: <http://www.wewantchoicewi.com/ratesupimage.html>. Appleton: 10.7% since 2005; Baraboo: 6.5% since last year; Beloit: 5.2% since last year; De Pere: 96% since 1996; Dodgeville: 13.3% since last year; Fond du Lac: 6.7% since last year; Fort Atkinson: 6.5% since last year; Green Bay: 237% since 1996; Hartford: 6.7% since last year; Kenosha: 76.6% since 1999; La Crosse: 8.8% since last year; Manitowoc: 140% since 1999; Marinette: 10.7% since 2005; Oshkosh: 10.7% since 2005; Portage: 6.5% since last year; Rhinelander: 94% since 2000; Ripon: 6.7% since last year; Superior: 43% since 2001; Wausau: 84% since 2001; West Bend: 6.7% since last year; Whitewater: 6.5% since last year; and, Wisconsin Rapids: 114% since 2002.

<sup>2</sup> Several independent programmers responded to the FCC's inquiry addressing conditions in the video distribution and programming markets (Notice of Proposed Rulemaking in the Matter of Leased Commercial Access and Development of Competition and Diversity in Video Programming Distribution and Carriage (MB Docket # 07-42). The comments detailed various discriminatory, non-pricing techniques applied to independent programmers vis-à-vis cable affiliates. A good sample of those claims is included in the comments of the National Alliance for Media Arts and Culture (NAMAC) and those of the America Channel. (Available online from the FCC web site.)