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August 13, 1980

Judith Jurin Semo, Esq.
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Dear Ms. Semo:

Your letter to me of August 11, 1980, is abrupt and consequently misleading.

(1) I did not say at our recent meeting that I intended to rely upon the Nielsen study "to establish the value of professional sports in comparison with intercollegiate sports"; it was NCAA that claimed such a sweeping comparison must be made. The record in Phase I (including the Nielsen study) establishes the value of live telecasts of the events of professional sports clubs represented by the Joint Sports Claimants; the record demonstrates as well that NCAA cannot properly claim for all "intercollegiate sports," the term used in your letter. It is true that the Nielsen data provides an important measure of comparative values and that we will refer to these data, but any comparison of values must be limited to what NCAA legitimately claimed.

(2) Mr. Thomas of your firm insists that NCAA's share of the Phase I allocation for sports should be based on a comparison of time occupied by collegiate sports telecasts and the time occupied by professional sports telecasts.

I responded in a fashion I think is still merited: It is outrageous, when the Joint Sports Claimants have proven in Phase I an entitlement of sports to a share well in excess of time occupied, for NCAA -- a free-riding beneficiary of that proof -- to suggest that the sports share should be split between college and professional sports on a time basis and without regard to audience and other factors.

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(3) Of course, NCAA's claim to 25 percent of the sports pool allegedly based on time is itself grossly exaggerated, even if one wildly indulges the assumption that all "intercollegiate sports" programming has been legitimately claimed by NCAA.

Indeed, the real misleading nature of your letter lies in the fact that we told you your figure was way off base and actually provided you with the Nielsen figures on which we intend to rely if we have occasion to respond to an NCAA evidentiary presentation. (The Tribunal has already ruled that you are not entitled to other data underlying the Nielsen study by its denial of NCAA's May 12, 1980, Motion for Production.)

My recollection is that we provided you with the Nielsen figures showing (1) the percentage of time occupied by collegiate events compared with the total sports time, (2) the audience attracted by collegiate events compared with the total sports audience, and (3) the share of the pool to which all colleges would be entitled if it were based on the viewing of collegiate events as a percentage of the sports share.

Our data from Nielsen show that of the sports programming reflected in the study, all collegiate events accounted for 3.6 percent of the audience and 7.7 percent of the time (reflecting a "popularity" for that programming akin to that shown for the local broadcasters in Phase I). Application of the collegiate audience figure (3.6 percent) to the Phase I sports share produces a figure of 0.432 percent of the total pool.

These are the only figures on which we have a present intention of relying, and our present intention is based on what we presently understand NCAA will try to show. If we must probe further to establish that NCAA events which might be thought to be particularly popular as cable-viewing fare are not, we will do so; and we will certainly show, should it

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become pertinent, that college sports events appearing on public television stations are totally irrelevant.

(4) The Joint Sports Claimants believe that as a matter of law NCAA cannot participate in the 1978 royalty pool to a greater degree than the claims it actually filed. Those claims were highly limited. We are asking, by separate motion, the Tribunal to rule that NCAA is not legally entitled to pursue a claim for more than what it asserted when it filed.

(5) Notwithstanding that essentially disqualifying flaw in NCAA's position -- and other serious flaws which we need not enumerate here -- we remain willing to reach an accommodation with NCAA which will avoid the necessity for litigation between us before the Tribunal in Phase II. The accommodation which we proposed at our meeting of August 7 remains, in our view, a resolution of this matter extraordinarily generous to NCAA. That accommodation extends to NCAA the 3.6 percentage of the sports award (0.432 percent of the total pool) which the Nielsen audience data attributes to all collegiate sporting events, without even considering the limited nature of NCAA's claims and such factors as the promotional value of professional sports to cable and the particular injury caused professional sports by secondary transmissions. This approach gives NCAA the same premiums above time and audience which the Tribunal -- based on the extensive proof which the Joint Sports Claimants presented during Phase I respecting the value of professional sports programming -- has assigned to sports generally.

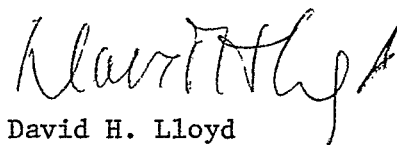
I am somewhat encouraged by your repeated efforts at obtaining Nielsen work to use in trying to make your case. These efforts strike me as a gratifying recognition by you of the importance of the Nielsen data in resolving the issues, and I am also reminded of the statement made in your brief to the Tribunal in Phase I that the Nielsen study should be afforded "great weight in the Tribunal's deliberations." Since we both see great merit in the Nielsen work, it would seem that we should both be willing to accept that work in resolving the differences between us. We are prepared to do just that.

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In sum, we will not provide you with additional Nielsen data at this time. And, we remain willing to settle any differences with NCAA as discussed above.

Very truly yours,

A handwritten signature in dark ink, appearing to read "David H. Lloyd", with a stylized flourish at the end.

David H. Lloyd

HAND DELIVERY

cc: Members of the
Copyright Royalty Tribunal