STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY

Re: *Sports Blackout Rules*, Report and Order, MB Docket No. 12-3 (September 30, 2014)

Let me start by acknowledging that I am a huge fan of American football, the National Football League (NFL), and in particular, the Buffalo Bills. Growing up just outside of Buffalo, I learned many life lessons by watching my team struggle and succeed over the years. The Bills have always played a significant role in the lives of the people of Western New York and their fans nationwide. Walk into any bar in the area and there is little doubt that the patrons can name every starting player on the team and probably the backups too.

To live in Buffalo also means that you face months upon months of cold and nasty weather. In exchange, you are surrounded by good-natured, hard-working, under-appreciated, America-loving, family-oriented people. And a major component of most weekends in the fall and winter for many families is the Bills game. The people love their team. This is why it was so important that the new owner agree to keep the team in Buffalo for the long term. No thanks, Mr. Jon Bon Jovi.

As a fan, I have experienced the near highest of highs and the lowest of low moments from my team. I still wonder…*what if* a wandering kick did not go "Wide Right" in a Super Bowl years ago. A fan's highs and lows with their team can be overcome, but what was downright infuriating growing up was the weekly concern that the NFL's blackout policy—bolstered by the FCC's rules—would force us to radio instead of watching the Bills on television. When many fans don't have the means or the opportunity to attend a game, one of the only hopes is that local businesses would purchase tickets, like my former employer, the local grocery chain, did on multiple occasions.

To put this in perspective, let me share with you one of the greatest NFL games ever that almost no one in Buffalo saw. Known simply in NFL parlance as "The Comeback," the Bills spotted the then-Houston Oilers a lead of 35-3 in the 1992-93 AFC Wild Card Game. I will spare you the stories of backup quarterback Frank Reich's heroics that turned that game around, but the Bills won the game in overtime 41-38 and propelled the team to their third straight Super Bowl appearance (and loss). Forgotten in the discussion is the simple fact that the game was blacked out in Western New York. I happened to see parts of the game from my part-time job in a local restaurant under a satellite retransmission exemption, but my family and friends did not see the game live.

As I have previously discussed publicly, this issue is not all that difficult for me to consider. Today's item does a good job explaining the arguments presented to maintain the rules and then adequately shoots them down one by one with fairly strong responses. To me, the only issues that really matter is whether the FCC's rules are providing unnecessary protections to the NFL and does that harm consumers. Upon review, the answer to these questions is "yes," and therefore I am pleased to approve this item.

I do not agree with the supposition that absent the FCC's Sports Blackout Rules the NFL would be unable to enforce its copyrights for NFL games. To the contrary, the NFL is in a prime position, with sufficient leverage, to convince broadcasters and MVPDs to agree to certain contractual provisions, including adhering to its misguided blackout policy, or risk losing access to the highest rated programming on television. Simply put, the NFL does not need the FCC's rules to do what it can do for itself.

In terms of impact on American consumers, the FCC's rules promote a policy that limits access to NFL games. Just last year, Buffalo Bills and San Diego Charger fans experienced blackouts. Moreover, three NFL playoff games (Colts, Packers and Bengals) faced blackouts until being saved by last minute ticket purchases. To argue that the number of blackouts is decreasing under the NFL's newly constructed policy is irrelevant. The policy serves to punish entire communities for the fact that the collective citizens in those areas are unable or unwilling for legitimate reasons to sell-out the game that week. It is not the role of the Commission to ensure the NFL gets every last nickel out of each NFL game being played.

I also disagree with the argument that the elimination of the FCC's Sports Blackout Rules would somehow drive NFL games away from free over-the-air television and towards pay television. The NFL maintains games on ad-sponsored broadcast television because, at this time, it is in the NFL's best financial interest. Football games on over-the-air broadcast stations still receive higher ratings and ad revenues than those on pay TV.

Ultimately, however, whether the majority of football games remain on broadcast television, or move to cable networks, will be a decision made by the NFL on how best to distribute its programming, as opposed to whether or not there is a blackout rule or maybe even the number of fans reached. Case in point is the 2005 decision to move its Monday Night Game from ABC, which had carried the games previously for 35 years, to ESPN despite the existence of the blackout rules and the undisputed fact that more Americans have access to ABC than ESPN. Similarly, the choice was made to broadcast only half of the Thursday night games this year on CBS, which has far more viewers than the NFL Network, which has rights to the other games.

We should acknowledge what our actions here will do and not do. The Commission has the ability to repeal the FCC's rules enforcing the NFL's blackout policy but that will do nothing to change the ability of the NFL to impose and enforce its own existing policy on broadcasters or MVPDs. The NFL has the right to maintain its current blackout policy, and I suspect that they will do so. That means, consumers in small sports markets should continue to expect the threat of future blackouts. Today's item just means that the FCC will no longer be complicit in helping continue such a flawed policy.

I thank the Chairman and the Media Bureau staff for preparing the item before us and moving it expeditiously. The Commission should look for more opportunities to remove or repeal rules that can be addressed by legal remedies or other methods available to the private sector.