

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington DC 20554**

In the Matter of )  
 )  
Petition for Rulemaking to Amend the ) MB Docket No. 10-71  
Commission’s Rules Governing )  
Retransmission Consent )

To: The Commission

**REPLY COMMENTS OF  
THE NATIONAL FOOTBALL LEAGUE**

Many of the initial comments filed in this proceeding by both supporters and opponents of the above-captioned Petition discuss the importance of sports in general, and National Football League (“NFL”) games in particular, to the current retransmission consent regime.<sup>1</sup> Both sides point to the popularity and importance of NFL programming to support their position for or against changes to the Commission’s rules governing retransmission consent. The debate in this proceeding between cable operators and broadcasters is played out in communities across the country, and frequently -- and unfortunately -- the NFL and its fans are caught in the middle.

The NFL considers broadcasters and many cable operators its partners in consistently supplying the most watched television programs in the country and is proud of its longstanding and ongoing commitment to free over-the-air television. The NFL is filing these reply comments to explain its commitment to broadcast television as the best currently-available means of meeting a key business objective, namely, developing and encouraging widespread fan

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<sup>1</sup> See, e.g., Comments of CBS at 7; Comments of RCN at 4, 6 n.6; Comments of Cablevision at 2 n.5, 7; Comments of Sinclair at 3 n.3, 6 n.8; Comments of NAB at 26, 40, 77.

support for and involvement in the sport of professional football. The ability of broadcast television to play the role of a truly national television platform has been under economic challenge in recent years, and clearly the retransmission consent process that Congress put in place is critical to the health of the broadcast industry.

For these reasons, the NFL does not support the effort to make radical changes to the process codified in the Communications Act.<sup>2</sup> In sum, the NFL finds the current retransmission consent framework to be working in the manner that Congress intended -- and that programmers have expected -- and that the current framework provides real and important benefits to the public.

The NFL has had a unique and longstanding commitment to free, over-the-air television broadcasting to provide broad distribution of games to fans. This commitment to broadcast television has remained in place, notwithstanding dramatic changes in the telecasting patterns of other sports properties, the widespread adoption of other television technologies,<sup>3</sup> and the well-documented economic challenges facing broadcast television. Retransmission consent helps stations to underwrite their investments in a wide range of quality programming, including entertainment programming, local and national news, and the rights to broadcast sports events, including NFL games, and it helps to prevent the migration of games to pay-TV services.<sup>3</sup>

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<sup>2</sup> See Petition for Rulemaking, MB Docket No. 10-71, filed by Public Knowledge; DIRECTV, Inc.; DISH Network LLC; Charter Communications, Inc.; American Cable Association; New America Foundation; OPASTCO; Time Warner Cable Inc.; Verizon; Cablevision Systems Corp.; Mediacom Communications Corp.; Bright House Networks, LLC; Insight Communications; Company, Inc.; and Suddenlink Communications (March 9, 2010).

<sup>3</sup> One comment stated that ESPN's televising of Monday Night Football was an example of "migration" of sports programming from broadcast to cable television. See Comments of Sinclair Broadcast Group at 6 n.8. Nothing of the sort occurred. Instead, ESPN simply shifted its nationally televised game from Sunday night to Monday night. Another national game, which had been televised by ABC on Monday night, moved to Sunday night and is televised by NBC. (continued...)

Americans love football. It is the most popular, most watched professional sport in the country. Super Bowl XLIV, the most recent championship game, drew a record 106.5 million viewers, making it the most-watched program *ever* in American television history.<sup>4</sup> Thirty-five percent of Americans say that football is their favorite professional sport – more than for the next four most popular sports (baseball, basketball, hockey, and auto racing) *combined*.<sup>5</sup> And the popularity of NFL games is growing. According to Nielsen Media Research, 226 million Americans watched NFL games in 2009 – up from 222 million in 2008 and 195.8 million in 2007. Regular season NFL games on broadcast television (CBS, Fox, and NBC) averaged 18.4 million viewers in 2009 – up two million viewers per game from 2008.

One of the key reasons why NFL games are so popular is the League's commitment to fan engagement. The League promotes fan engagement by embracing free, over-the-air television broadcasting:

- The League makes sure that *all* 256 regular season games and *all* play-off games are available to consumers on free broadcast television. Games that are shown primarily on cable television are still available on over-the-air stations in the home cities of the participating teams (subject to local blackouts, as described below).
- Fans can always watch their local teams' away games on broadcast television. Except in relatively rare instances (when home games are not sold out 72 hours in advance, thus triggering a blackout), each home game is also televised locally, over-the-air.
- Every Sunday afternoon during the regular season, CBS and Fox affiliates broadcast a full slate of NFL games. These games are televised on a regional basis and often are followed by broadly distributed "double header" games.

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In other words, the switch of Sunday and Monday night television partners had no effect on the number of NFL games televised on broadcast and cable television.

<sup>4</sup> Marisa Guthrie, "Super Bowl Is Most-Watched Program in TV History," BROADCASTING AND CABLE (Feb. 8, 2010).

<sup>5</sup> The Harris Poll (February 2010).

- Every Sunday night during the regular season, NBC televises one game nationally.
- Playoff games, including the Super Bowl, are always televised nationally by one of the over-the-air broadcast television networks.

While the League expands audience reach by making additional games available via cable and satellite, these additional distribution mechanisms supplement the local distribution of games via broadcast television.

Fans also find NFL games to be compelling programming because the League pursues competitive balance. By pooling member club television rights, and then by sharing the revenues from these and other sources equally, as well as through other means, NFL clubs in smaller communities (such as Green Bay and Buffalo) are able to compete on a level playing field with clubs in the larger markets, both game to game and season to season. Competitive balance results in close games, exciting division races, and the opportunity for every club to have a chance at winning a championship, and this of course in turn translates into heightened fan interest and engagement.

The League strongly supports broadcasters' right to negotiate for fair compensation for their programming when it is retransmitted by pay-TV providers. As Congress found in establishing retransmission consent, cable systems obtain "great benefits from local broadcast signals."<sup>6</sup> That was true when Congress wrote it in 1992, and it remains equally true today, given that the most-watched programs on pay-TV services today are overwhelmingly found on broadcast television networks.<sup>7</sup> The NFL has relied on this principle in deciding

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<sup>6</sup> Cable Television Consumer Protection Act of 1992 ("1992 Cable Act"), Pub. L. No. 102-385 (1992), at Section 2(a)(19).

<sup>7</sup> For example, in the February 2010 sweeps period, broadcast programming "took all but a handful" of the top ratings. *See* TVB's Ratings Track: Sweeps Period Analysis/February 2010 (continued...)

repeatedly to keep NFL games on broadcast television. Of course, to air popular programming, such as entertainment, news and sports, broadcasters must either pay to create it or acquire the rights to it – including NFL games. Retransmission consent fees play an increasingly important role in helping to underwrite program acquisition costs and local stations’ service to their communities, particularly in the face of increasing competition for scarce advertising dollars.

If the retransmission consent principle that Congress enacted was to be undermined by regulatory fiat, broadcasters would find themselves under increased economic pressure and would be less able to supply popular and high-quality entertainment, news and public interest programming; moreover, the migration of popular sports programming from free, over-the-air television to pay-TV services would likely be accelerated. Put simply, if local stations are prevented from negotiating for fair retransmission consent payments in the marketplace, then many of them will not have the resources to invest in local news, original programming or television rights to broadcast NFL programming. Such an outcome may benefit pay-TV providers, but it would not benefit the public.

## **CONCLUSION**

Free, over-the-air broadcast of NFL games engages fans and responds to tremendous public interest in football. The NFL’s current reliance on broadcast television has enabled it to deliver highly rated, desirable programming to a very broad fan base. The NFL is committed to broadcast television, and believes that today’s retransmission consent process is fair and helps support broadcasters’ ability to invest in quality programming. If the economic

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(measuring ratings data for subscription television), *available at* [www.tvb.org/rcentral/viewertrack/trends/sweeps\\_period\\_analysis.asp](http://www.tvb.org/rcentral/viewertrack/trends/sweeps_period_analysis.asp); *see also* TVB’s Ratings Track for the week ending May 9, 2010 (noting that broadcasting delivered 93 of the top 100 programs among adults 18-49), *available at* [www.tvb.org/rcentral/viewertrack/weekly/2009-10/a18-49/a18-49.asp?ms=may\\_9-2010.asp](http://www.tvb.org/rcentral/viewertrack/weekly/2009-10/a18-49/a18-49.asp?ms=may_9-2010.asp).

viability of broadcasters is further undermined, they may be unable to make the investments needed to televise a full schedule of NFL games, or to continue to televise games of all clubs.

Ultimately, grant of the Petition would harm consumers. Accordingly, it should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lindsey Tonsager". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

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