

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
Petition for Rulemaking to Eliminate the) MB Docket No. 12-3
Sports Blackout Rule) DA 12-44
)
)

**REPLY COMMENTS OF SPORTS FANS COALITION, INC.; NATIONAL
CONSUMERS LEAGUE; PUBLIC KNOWLEDGE; LEAGUE OF FANS; MEDIA
ACCESS PROJECT**

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I. INTRODUCTION AND SUMMARY

Sports Fans Coalition, Inc., National Consumers League, Public Knowledge, League of Fans, and Media Access Project (hereinafter, "Petitioners"), together with nine distinguished sports economists (hereinafter, "Sports Economists")¹ and thousands of individual sports fans from around the nation have established in this proceeding that the Sports Blackout Rule must go. Regardless of whether or not eliminating the Sports Blackout Rule will change the behavior of professional sports leagues in needlessly denying games to fans, the federal government should no longer prop up leagues' economically irrational and anti-consumer blackout policies.

¹ Dr. Robert Baade, Lake Forest College; Dr. Dennis Coates, University of Maryland Baltimore County; Dr. Rodney Fort, University of Michigan; Dr. Ira Horowitz, University of Florida; Dr. Brad Humphreys, University of Alberta; Dr. Roger G. Noll, Stanford University; Dr. Allen Sanderson, University of Chicago; Dr. John J. Siegfried, Vanderbilt University; and Dr. Andrew Zimbalist, Smith College.

The Commission must be moved to action by the public outcry in this proceeding against sports blackouts and the government policies that enable them. Perhaps most compelling are the statements by disabled and elderly fans who are physically unable to attend games in person and therefore rely on television to enjoy the games that they as taxpayers and voters help to finance.

Sports blackouts originate with the leagues themselves and yet, as the Sports Economists explain in detail, there is not a single, salient economic rationale for the leagues to impose such blackouts. Despite the NFL's contention that blackouts make for a more compelling television event, the Sports Economists demonstrate that there is no evidence such blackouts have a significant effect on attendance, revenues, or profits, and that ending such blackouts probably would have little if any economic effect on the league. The Commission therefore is upholding an economically irrational policy in the name of supporting the public interest.

Ending the Sports Blackout Rule, even if the leagues continued their blackout practices, would have no material effect on leagues' decision to televise games on free over-the-air broadcast. As the Sports Economists explain, the relatively insignificant economic effect on the NFL of the few blacked out games today means that eliminating the Sports Blackout Rule would not have a material impact on the NFL's broadcast distribution policies. Current agreements between broadcasters and the NFL will remain in place for many years and keep the games on free over-the-air broadcast, regardless of regulatory changes.

As much as Petitioners would like to believe that ending the Sports Blackout Rule would instantly grant fans relief and end local sports blackouts as we know them, this probably is not the case. Contrary to leagues' and broadcasters' breathless prediction that in the absence of

the Sports Blackout Rule, pay-TV providers could use compulsory copyright statutes to circumvent local broadcast blackouts, a closer reading of the law yields a much different conclusion. Compulsory copyright statutes, network non-duplication rules, and broadcasters' retransmission consent agreements largely would prevent pay-TV providers from carrying a game blacked out on local broadcast.

If professional sports leagues believe that they must have some protection in place to stop pay-TV providers from televising a game blacked out on local broadcast, the leagues can use their existing contracts with pay-TV providers to achieve that goal. Virtually every major pay-TV company has direct contracts with sports leagues for products such as NFL Network, NFL RedZone, MLB Network, NBA TV, NBA League Pass, NHL Network, NHL Center Ice, and in the case of DIRECTV, NFL Sunday Ticket. In the absence of the Sports Blackout Rule, it is not difficult to imagine the leagues adding another term and condition to those contracts to address the treatment of local sports blackouts.

Petitioners submit that the federal government should not be in the business of propping up the anti-consumer, economically irrational blackout practices of professional sports leagues. Our hope is that in the absence of such subsidization, if faced with the prospect of actually having to bargain in the free market to perpetuate blackout policies, leagues might voluntarily curtail their blackouts. One thing is certain: unless and until the Commission eliminates the Sports Blackout Rule, the sports leagues will be under no pressure to contractually negotiate for the protection they claim is necessary. In the case of the NFL, if playing before a "packed house" is important, perhaps it can do what every U.S. airline does and lower ticket prices until all seats are sold. Either way, the American public, including the individuals who filed comments in this proceeding, would be better served.

II. THE AMERICAN PUBLIC OPPOSES SPORTS BLACKOUTS AND GOVERNMENT POLICIES UNDERPINNING SUCH BLACKOUTS

The passionate statements by thousands of Americans in this proceeding calling for an end to the Sports Blackout Rule demonstrate the unpopularity of sports blackouts and government policies propping them up. Perhaps most compelling are the comments from disabled and elderly sports fans who cannot attend games in person and rely on television to watch the games. For the disability and aging communities, sports blackouts and the Sports Blackout Rule are particularly pernicious:

- *I'm a disabled Viet Nam vet. I also suffer from [Post Traumatic Stress Disorder, or "PTSD"]. I am unable to attend the Bills games because of my disabilities. I have been a fan for as long as I can remember. [Now] I am limited to where I go and what I can do. Watching the bills on TV is one thing I look forward to every year, as well as help me deal with PTSD. Please put all the games on TV for me and others who gave much of ourselves for our country.*
--Denis Steinmiller, North Tonawanda, NY
- *We are "old-time" football fans. We are also "old-timers" who are unable to attend games in person – you know -- "we're too old to cut the mustard anymore." So please put an end to the Sports Blackout Rule. We really want to see the games on our TV at home -- full stadium or not. We aren't watching the fans at the stadium, we're watching the game and the team we love. GO BILLS! Thanks!*
--William and Elaine Jackson, Orchard Park, NY
- *It's time to end to the Sports Blackout Rule. For people like me, who are disabled, this blackout rule is discrimination to people with disabilities. I CANNOT physically attend a live game at any arena. I am stuck at home with only the television to bring me the sports, or anything else, I enjoy watching. . . . The NFL blackout policy from the 70's do[es] not reflect the times of today. Technology has changed. [The] NFL's market has changed. Where do they think all that money comes from? It is US, the consumer who buys the products from their advertisers. It is US the taxpayer, who built most of the arenas. It is US the American citizen who continues to foot the bill We the people have had enough, and I am tired of being discriminated against by big greedy business.*
--Mary Bash, Masaryktown, FL

Petitioners believe that the Commission should weigh heavily the public's sentiments when determining the public interest. The issues in this proceeding are highly technical and involve many multi-billion dollar industries. The driving force behind the Commission's decision-making, however, should be an understanding that the current marketplace is not serving consumers—sports fans—and needs to change.

III. NO COMPELLING ECONOMIC RATIONALE SUPPORTS SPORTS BLACKOUTS

Sports blackouts originate with the professional sports leagues themselves and are perpetuated either through contract or, in this case, regulation. The Commission therefore should address whether the underlying practice of sports blackouts deserves the protection currently granted under the Sports Blackout Rule.

The NFL's assertion that its blackout policies are necessary to promote full attendance at stadiums is directly undermined by MLB's statements in this proceeding. The NFL says that one of its "most important" media policies is to "promote fan attendance and to maximize the in-stadium experience of supporting fans cheering on a team."² It says that blackouts, "supported by the FCC's sports blackout rule, promote live attendance and thus improve the stadium experience."³ At bottom, the NFL says that "for both the fans in the stadium and the fans watching on television, a packed house matters."⁴

The MLB, on the other hand, defends the Sports Blackout Rule and maintains that MLB's blackout policy is vital, despite the fact that the vast majority of its games do not sell

² NFL at 3.

³ Id. at 7.

⁴ Id. at 8.

out.⁵ Thus, while the Sports Blackout Rule most clearly impacts the NFL,⁶ the fact that MLB televises games that have not sold out begs the question as to whether the NFL's defense of its policy makes sense.

Petitioners agree with the Sports Economists that there is, in fact, no economic rationale behind sports blackouts. There is "no evidence that the current blackout practices of the NFL have a significant effect on attendance, revenues, [or] profits"⁷ and even if the NFL were compelled to end its local blackout policy, which is unlikely, "there is no factual basis to the claim that the NFL would suffer a significant adverse effect."⁸

Based on evidence in this proceeding, therefore, it appears that the Commission is upholding an anti-consumer practice by professional sports leagues that has no rational economic basis for the leagues themselves. Given the intensity of the public's distaste for sports blackouts

⁵ MLB at 8.

⁶ Petitioners agree with the Sports Economists that the Sports Blackout Rule has "little relevance" for professional sports other than the NFL because in Major League Baseball, for example, television rights are sold by individual teams, as opposed to the league. Sports Economists at 7. A game is not "blacked out" by the local team or the MLB, but rather is not televised because the local team decided months earlier not to televise that game locally, often to avoid a conflict with network or superstation carriage. The local broadcaster in this scenario loses nothing—it is not ordered to black out a game and therefore would be unaffected if fans watch that game on a non-broadcast service. There is no threat that a cable or satellite operator would "circumvent," as some parties describe it, that local blackout.

⁷ Sports Economists at 18.

⁸ Sports Economists at 1, 12 ("The overall trend has been that during the past 60 years, fewer and fewer games have been blacked out, but attendance, ticket prices, and team revenues and profits have continued to grow. With only a few games now being blacked out, it is not credible that eliminating the remaining blackouts would have a substantial effect on any of these trends").

and the lack of economic support for the practice, Petitioners believe that the Commission should stop subsidizing anti-consumer league practices and eliminate the Sports Blackout Rule.

IV. ELIMINATING THE SPORTS BLACKOUT RULE WOULD NOT DRIVE SPORTS PROGRAMMING AWAY FROM BROADCASTING

Even if, as the record suggests, local sports blackouts are economically irrational, opponents to eliminating the Sports Blackout Rule contend that the rule should be in place to protect free over-the-air broadcasting. The alarmist claims by the NAB and NFL that ending the Sports Blackout Rule will force sports programming off broadcasting, however, also do not stand up to economic logic and analysis.

NAB argues erroneously that the Sports Blackout Rule, along with other program exclusivity rules, is critical to maintaining broadcasters' geographic exclusivity and local advertising revenues and "prevent[s] pay TV operators from circumventing the exclusivity agreements."⁹ The NAB and NFL further argue that eliminating the Sports Blackout Rule would hasten the migration of sports away from free over-the-air broadcast and onto pay-TV networks.¹⁰

Not so. As the Sports Economists explain, the relatively insignificant economic effect on the NFL of the few blacked out games today means that eliminating the Sports Blackout Rule would not have a material impact on the NFL's broadcast distribution policies. The NAB's and NFL's prediction is based on the premise that blackouts significantly affect attendance and

⁹ NAB at 2, 6, 7.

¹⁰ Id. at 2, 8; NFL at 7 ("[The Sports Blackout Rule] enables teams to promote fan attendance without having local broadcast blackouts circumvented by MVPDs, and for that reason the Commission has found, and we agree, that the rule 'assure[s] the continued availability of sports telecasts to the public'").

revenues. If there is no such effect, then ending the FCC's blackout rules cannot possibly cause a migration away from free television. . . . [A] change in blackout policy will not alter the relative attractiveness of over-the-air and [pay-TV] to the NFL.¹¹

Moreover, current agreements between broadcasters and the NFL will remain in place and keep the games on free over-the-air broadcast. The recently announced multi-year, multi-billion dollar NFL broadcast agreements probably would remain in effect regardless of any changes to the Sports Blackout Rule.¹²

The NFL and NAB cannot have it both ways: on the one hand, the NFL argues in this proceeding that it blacks out a tiny percentage of total games, as if to suggest that blackouts are insignificant.¹³ On the other hand, the NFL and NAB argue that but for the Commission's Sports Blackout Rule, professional sports would migrate away from free over-the-air broadcasting due to the dire threat of fans watching a locally blacked out game. These two assertions cannot both be accurate. Even setting aside economic logic, as explained in further detail below, legal and regulatory hurdles exist to prevent MVPDs from importing a blacked out game even in the absence of the Sports Blackout Rule.

¹¹ Economists at 17.

¹² See Alex Ben Block, *NFL Extends TV Network Broadcast Deals through 2022*, The Hollywood Reporter (Dec. 14, 2011) (CBS, Fox, and NBC each will pay \$3 billion per year and take turns carrying the Super Bowl) available at <http://www.hollywoodreporter.com/news/nfl-extends-TV-network-deals-273789>.

¹³ NFL at n.1 (16 out of 256 games last year were blacked out, making them the "rare" exception).

V. ENDING THE SPORTS BLACKOUT RULE ALONE WOULD NOT SOLVE FANS' BLACKOUT PROBLEM

As much as Petitioners would like to believe that ending the Sports Blackout Rule would instantly grant fans relief and end local sports blackouts as we know them, this probably is not the case. Compulsory copyright statutes, network non-duplication rules, and broadcasters' retransmission consent agreements largely would prevent pay-TV providers from carrying a game blacked out on local broadcast. In fact, the immediate effect of eliminating the Sports Blackout Rule absent voluntary changes from the leagues probably would be negligible.

Petitioners believe, however, that it would be a necessary first step to addressing fans' concerns.

a. Compulsory Copyright Statutes Curtail Pay-TV Providers' Ability to Show Locally Blacked Out Games.

NAB, MLB, and the NFL all argue that the Sports Blackout Rule must exist because the compulsory copyright regimes enacted by Congress grant pay-TV companies the right to retransmit out-of-market broadcast signals. All three organizations characterize the compulsory copyrights as somehow enabling pay-TV providers to carry any blacked out game, at will, but for the Sports Blackout Rule.¹⁴

A closer reading of the actual statutes, however, reveals a far more restrictive regime than the picture painted by NAB, MLB, and the NFL. For satellite providers, the compulsory

¹⁴ NAB at 2,7 (Sports Blackout Rule “prevent[s] pay TV operators from circumventing the exclusivity agreements through technology and the distant signal compulsory license on which these operators rely”); NFL at 11 (“In the absence of the rule, the local television station still would be required to black out the game if required to do so by the rights-holder, and viewers that rely on free, over-the-air broadcast television still would not be able to view the game. . . . The clear beneficiary, obviously, would be the MVPDs, [because it] would make cable network distribution a more appealing prospect”); MLB at 10 (“[c]able systems and satellite carriers would be allowed under the compulsory copyright licenses to import the other station’s telecast throughout the home territory”).

copyright provisions enabling broadcast retransmissions prohibit the importation of out-of-market signals to almost all homes, such that neither DISH Network nor DIRECTV could import a broadcast signal from another market carrying the blacked out game.¹⁵ In the case of DISH Network, which provides local broadcast channels to all Designated Market Areas (“DMAs”), the If-Locals-No-Distants rule greatly restricts DISH Network’s ability to use the compulsory copyright provisions to import a game from a distant market’s broadcast station when that game is blacked out locally.

DIRECTV similarly is restricted in the DMAs where it provides local broadcast signals, which includes all major markets, precisely the markets where sports stadiums are located and local blackouts occur. This means that for all practical purposes, the If-Locals-No-Distants limitation applies to DIRECTV wherever local sports blackouts occur. Only so-called “grandfathered” households that already receive a distant network signal would be the exception. Thus, with respect to both DISH Network and DIRECTV, the number of actual homes that could view an out-of-market signal when the local game has been blacked out is de minimus, if not zero.

While the cable compulsory license does not have the same geographic limitations as the satellite license, the compulsory copyright fee structure makes widespread use of the license by cable operators to televise a single game infeasible. A cable operator must pay a Distant Signal Equivalent (“DSE”) rate of up to 3.75% gross receipts for any out-of-market broadcast

¹⁵ 17 U.S.C. § 122(a)(1) (satellite retransmission of local broadcast signal only authorized when programming is provided only to households within the DMA of origin); 17 U.S.C. § 119(a)(2)(B) (satellite retransmission of distant network signals limited to unserved households); 17 U.S.C. § 119(a)(2)(C)(i) (satellite retransmission of a distant network signal prohibited to households capable of receiving the signal of that network’s local affiliate from the satellite provider—the so-called, “If-Locals-No-Distants” rule).

signal it brings into another local market.¹⁶ A cable operator often must make such payment for an entire six-month period, even if it carries the DSE for a fraction of that time.¹⁷ In practice, these fees are more than double the average license fee for a basic cable network and have contributed to the significant decrease in cable operators carrying distant signals.¹⁸ To pay such a fee to import a single regular season game makes no economic sense.

Thus, the fee structure for the cable compulsory license would for all practical purposes make distant network signal importation of a locally blacked out game financially infeasible. The cable compulsory copyright license therefore probably would preclude giving fans, in the absence of the Sports Blackout Rule, the ability to watch a locally blacked out game on their local cable provider.¹⁹

b. The Network Non-Duplication Rule Blocks Any Blacked Out Game on a Broadcast Network.

Even setting aside the inherent limitations in the compulsory copyright regime that would prevent a pay-TV provider from circumventing a local blackout in the absence of the

¹⁶ See 37 C.F.R. § 201.17 (Statements of Account Covering Compulsory Licenses for Secondary Transmissions by Cable Systems); 37 C.F.R. § 256.2(a), (c)(3) (Royalty Fee for Compulsory License for Secondary Transmission by Cable Systems).

¹⁷ 37 C.F.R. § 201.17(f)(1)-(3).

¹⁸ See Written Statement and Comments of the National Cable & Telecommunications Association before the Copyright Office, Library of Congress, Section 109 Report to Congress, Doc. No. 2007-1 (Jul. 2, 2007) at 12-13.

¹⁹ MLB argues that the Commission should not alter the Sports Blackout Rule when courts are examining whether online providers can avail themselves of the cable compulsory license. MLB at 3. The fact that litigation is pending on the scope of compulsory copyright licenses should not impede the Commission from acting. If Congress believes that courts misconstrue the statute, it can respond by amending the statute.

Sports Blackout Rule, the Commission's own rules further restrict MVPDs' ability to televise a game that leagues have ordered blacked out on local broadcast television. The network non-duplication rules²⁰ would prohibit importation of an out-of-market broadcast network signal carrying the local affiliate's blacked out game. For example, in the case of the National Football League ("NFL"), Sports Fans Coalition is not aware of any free over-the-air broadcast games that are not on NBC, CBS, or Fox networks. All such games therefore are subject to the network non-duplication rule and could not be imported from a distant network affiliate to circumvent a local blackout.

c. Broadcasters' Retransmission Consent Probably Limits Out-Of-Market Use Of Their Signals.

Another potential bar to sports fans accessing a locally blacked out game in the absence of the Sports Blackout Rule is the restriction any broadcaster might put on its signal being used outside of its home market. Specifically, in granting retransmission consent to a pay-TV provider to carry its signal locally, a broadcaster may demand that its signal not be used in another market, despite the fact that the copyright statutes would allow it. Given the strident opposition to eliminating the Sports Blackout Rule voiced by the NAB, it is reasonable to conclude that broadcasters will present a united front against allowing out-of-market signals to be imported into a market where a local game has been blacked out by the league.

Thus, even in the absence of the Sports Blackout Rule, contrary to the sweeping statements by the NAB, NFL, and MLB, myriad other federal statutes and regulations would prevent fans from watching a game blacked out on local television, as summarized below:

²⁰ 47 C.F.R. § 76.92(a) (cable operator may not carry the broadcast network programming provided by the local affiliate of the same network); 47 C.F.R. § 76.122(a) (same restriction applied to satellite).

**Limitations on Pay-TV Providers Importing an
Out-of-Market Broadcast Signal to
Provide Fans with a Locally Blacked Out Game**

	Cable Company	DISH Network	DIRECTV
Compulsory copyright statutory restrictions	Sec. 111 makes market-wide importation cost-prohibitive (rate of up to 3.75% of revenue; carriage could trigger payment for entire 6-month period)	If-Locals-No-Distant rule precludes distant network signals to all 210 DMAs served with locals by DISH, which includes major media markets with sports stadiums	If-Locals-No-Distants rule applies because DIRECTV provides locals in major media markets with sports stadiums. Only exception might be grandfathered distant network signal subscribers
Network Non-Duplication Rule applies?	Yes—any game on network broadcast cannot be imported	Yes	Yes
Retransmission consent limitations imposed by out-of-market broadcaster?	Probably—out-of-market station retransmission consent agreements likely restrict out-of-market use of signal	Probably	Probably

VI. LEAGUES SHOULD USE THEIR EXISTING CONTRACTUAL RELATIONSHIPS WITH PAY-TV PROVIDERS, NOT FEDERAL RULES, IF THEY INSIST ON ENFORCING THEIR ANTI-FAN BLACKOUT POLICIES

Petitioners believe that the federal government should not be in the business of propping up the anti-consumer, economically irrational blackout practices of professional sports leagues. Our hope is that in the absence of such subsidization, leagues might voluntarily curtail their blackouts. Given what the NFL and MLB describe as a daunting contractual negotiation

project in the absence of the Sports Blackout Rule,²¹ perhaps eliminating the rule would inspire the leagues to once and for all abandon their local blackout policies.

Petitioners disagree, however, with the leagues' characterization of what a free-market, contractual negotiation would look like in the absence of the Sports Blackout Rule. The leagues claim that they lack privity of contract with the parties necessary to enforce blackout policies.²² This ignores the direct privity of contract the leagues have today with the pay-TV distributors themselves.

Specifically, virtually all major pay-TV providers carry networks or game packages owned directly by sports leagues, such as NFL Network, NFL RedZone, MLB Network, NBA TV, NBA League Pass, NHL Network, NHL Center Ice, and in the case of DIRECTV, NFL Sunday Ticket. It is not difficult to imagine the sports leagues simply adding as a condition of such carriage the imposition of local broadcast sports blackouts. In other words, the leagues can

²¹ NFL at 5-6 (Sports Blackout Rule remains “necessary because these protections cannot be achieved reliably or efficiently, let alone exclusively, in the marketplace;” “Because of the compulsory copyright, obtaining the ability to effectuate a blackout through private contracts would entail substantial cost and effort, the rewriting of literally hundreds of contracts, extensive monitoring and after-the-fact enforcement efforts, and yet still would not be completely effective;” contracts would have to be modified between: 1) the NFL and broadcast networks; 2) the network/affiliate agreements; and 3) network affiliates and MVPDs); MLB at 10 (“Baseball cannot negotiate the type of blackout protection provided by the Sports Rule (or any other blackout protection involving distant signals) because the compulsory copyright licenses effectively trump any such negotiations; cable operators and satellite carriers need not black out any programming carried pursuant to compulsory copyright licensing unless the FCC rules require such blackouts”).

²² NFL at 6 (NFL contracts directly with CBS, FOX, and NBC and therefore “lacks privity” with broadcast affiliates and pay-TV companies).

negotiate in the free market to obtain any anti-circumvention protection they claim the Sports Blackout Rule must provide.

The NFL also claims that the “renegotiation process” with MVPDs, absent the Sports Blackout Rule, “would be complicated by the fact that MVPDs likely would resist inclusion of any contractual alternative to the sports blackout rule.”²³ This not only ignores the privity of contract with MVPDs described above, but begs the question: if MVPDs would resist contractual alternatives to the blackout rule in a free market, why should the government have to intervene to uphold the leagues’ blackout policies? The leagues have not shown sufficient evidence that eliminating the Sports Blackout Rule would cause them material economic harm. Since the leagues are asking the government to negate what they believe would be the outcome of free market negotiations, they should bear the burden of demonstrating that economic harm would result if the Sports Blackout Rule were eliminated, and why any such harm (if it can be proven) is significant enough to warrant government intervention.

Accordingly, the Sports Economists conclude that in the absence of the Sports Blackout Rule, if the leagues felt it absolutely necessary to perpetuate their blackout policies, direct contractual negotiations between leagues and pay-TV companies would be a practical way to do so. Regarding the NFL, the Sports Economists assert that “because *all* television rights to NFL games are sold by the league, the NFL could impose the same blackout restrictions on all entities that televise NFL games.”²⁴ Perhaps to the chagrin of sports fans, the Sports Economists

²³ NFL at 6

²⁴ Sports Economists at 6, 19 (“If the FCC eliminates its blackout rules, the NFL can continue the status quo through provisions in its television contracts”).

concede that “the only likely effect of eliminating the FCC’s blackout rules is to remove formal regulatory support” for an unseemly league practice, not end the practice altogether.²⁵

One thing is certain: unless and until the Commission eliminates the Sports Blackout Rule, the sports leagues will be under no pressure to contractually negotiate for the protection they claim is necessary. If, as the leagues predict, such negotiations would be too daunting, then eliminating the government subsidization of blackouts may impel the leagues to end local sports blackouts altogether. In the case of the NFL, if playing before a “packed house” is important, perhaps it can do what every U.S. airline does and lower ticket prices until all seats are sold. Either way, the American public, including the individuals who filed comments in this proceeding, would be better served.

VII. THE COMMISSION ALREADY HAS RECEIVED SUFFICIENT RECORD EVIDENCE TO ELIMINATE THE SPORTS BLACKOUT RULE AND CAN COLLECT MORE INFORMATION IN ITS RULEMAKING PROCEEDING

Opponents to eliminating the Sports Blackout Rule incorrectly argue that Petitioners have failed under the Administrative Procedures Act to provide adequate evidence of a need to do so.²⁶ This claim does not stand up to the facts and analysis presented on the record. The comments of nine prominent sports economists explaining changes in the market over nearly four decades; changes in compulsory copyright statutory and FCC regulatory regimes since adoption of the Sports Blackout Rule; and thousands of fact-based testimonials from members of the public refuting the leagues’ description of why the rule is good for fans all adequately

²⁵ Sports Economists at 6.

²⁶ NAB at 9, NFL at 12

provide the Commission with detailed, authoritative, and compelling record evidence to support eliminating the Sports Blackout Rule.

This distinguishes the current proceeding from those overturned by the courts in cases cited by NAB²⁷ because the aforementioned factual changes since the rule's inception cited by Petitioners and other parties provide "good reasons for the new policy" and provide "factual findings that contradict those which underlay" the Sports Blackout Rule.²⁸ Moreover, the Commission will receive even more record evidence by moving to the next procedural step and opening a rulemaking proceeding, which it should do with all deliberate speed.

²⁷ NAB at at n.26

²⁸ FCC v. Fox Television Stations, Inc., 129 S.Ct. 1800, 1810-13 (2009).

VIII. CONCLUSION

For the foregoing reasons, the Commission should eliminate the Sports Blackout Rule. At the very least, the Commission should commence a rulemaking proceeding to take the next step in eliminating an outdated, unnecessary, and anti-consumer regulation.

Respectfully submitted,

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February 28, 2012

CERTIFICATE OF SERVICE

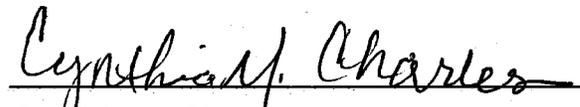
I, Cynthia M. Charles, a secretary at the law firm of Weiner Brodsky Sidman Kider PC, do hereby certify that on this 28th day of February, 2012, I caused a copy of the foregoing "Opposition of the National Football League" to be sent via first-class U.S. Mail, postage prepaid, to the following:

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