

February 28, 2012

BY ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

Re: Joint Reply Comments of the CBS Television Network Affiliates Association, NBC Television Affiliates, and ABC Television Affiliates Association in the Matter of Petition for Rulemaking Seeking Elimination of Sports Blackout Rule, MB Docket No. 12-3

Dear Ms. Dortch:

The CBS Television Network Affiliates Association, NBC Television Affiliates, and ABC Television Affiliates Association (the “Associations”) oppose the petition for rulemaking to repeal the sports blackout rule. We agree with the National Association of Broadcasters (“NAB”) that the elimination of this rule would be harmful to localism and would impair the services that local television stations provide to communities.¹

Like the Commission’s network nonduplication and syndicated exclusivity rules, the sports blackout rule provides a means of enforcing the private, contractual rights of copyright owners for distribution of their program content on local television broadcast stations.² The National Football League (“NFL”) has indicated that its sports blackout policy is key to its distribution of all NFL games on free, over-the-air, local television.³ The sports blackout rule does not create blackouts. Rather, it respects the contractual rights negotiated by copyright holders for distribution of sports programs by local broadcast stations — contractual rights that otherwise would be compromised by the statutory compulsory copyright licenses that afford cable and satellite companies the ability to retransmit the signals of distant television stations without the consent of the copyright holder. As the Office of the Commissioner of Baseball noted, the sports blackout rule prevents cable and satellite companies from exploiting the compulsory copyright licenses to interfere with copyright holders’ market-based decisions about

¹ NAB Comments in MB Docket No. 12-3, at 6-10 (filed Feb. 13, 2012).

² NFL Comments in MB Docket No. 12-3, at 4-7 (filed Feb. 13, 2012).

³ *Id.* at 2-4.

the distribution of sports programming.⁴ In the absence of the sports blackout rule, these pay-television services could distribute television stations' broadcasts of sports programming into markets in which broadcast of that programming had not been authorized by the copyright holder.

Local television broadcasters would prefer, of course, to have the rights from sports programming copyright holders to broadcast all sporting events. But to the extent that professional sports leagues exercise their contractual rights to black out events, providers of free, over-the-air television services should not be disadvantaged compared to pay television service operators. The Commission already has recognized the necessity of permitting "equality . . . of contractual opportunity among competing modes of distribution" to ensure "free and efficient functioning of competitive market processes."⁵ If the Commission repealed the sports blackout rule, the competitive balance of contractual opportunity would be tipped in favor of pay television services. Because professional sports leagues would be limited in their ability to manage the television distribution of their events, they would have a substantial incentive to move their programming to pay-television services, with whom the compulsory copyright license regime would not undermine private distribution agreements. Moreover, repeal of the sports blackout rule would result in the Commission favoring sports fans who are able to afford pay-television services over sports fans who, of necessity or choice, rely on free, over-the-air television. First, if marquee sports events migrate to pay-television channels, then fans who rely on over-the-air television will not be able to watch *any* of these events. Second, to the extent that professional sports events remain on broadcast television, a repeal of the sports blackout rule would create a greater disparity between over-the-air television viewers, who would continue to experience blackouts, and fans who pay for expensive cable and satellite subscriptions, who would not.

By hindering local television stations' ability to secure highly valued content, and by placing television stations at a competitive disadvantage to their pay television competitors, repeal of the sports blackout rule would harm local television stations in their local advertising sales.⁶ Such a reduction in stations' advertising revenues could require stations to make difficult choices concerning the services that stations provide to their local communities and could compromise investments in local news operations and in upgrading infrastructure (such as rolling out high-definition digital newsrooms and mobile digital television services). The Associations' member stations take their public interest obligations very seriously and strive to serve their communities with high quality, timely, diverse, and informational local programming and popular sports programming. For that reason, the Associations oppose the petition for rulemaking to eliminate the sports blackout rule.

⁴ Office of the Commissioner of Baseball Comments in MB Docket No. 12-3, at 2 (filed Feb. 13, 2012).

⁵ *Amendment of Parts 73 and 76 of the Commission's Rules Relating to Program Exclusivity in the Cable and Broadcast Industries*, Notice of Inquiry and Notice of Proposed Rule Making, 2 FCC Rcd 2393, para. 12 (1987).

⁶ See NAB Comments at 7.

Respectfully submitted,

/s/

Wayne Daugherty
Chair
CBS Television Network Affiliates Association

/s/

Brian Lawlor
President-Chairman
NBC Television Affiliates

/s/

William Hoffman
Chair
ABC Television Affiliates Association

cc: Brian Frederick (Sports Fan Coalition) (by first-class mail)
Sally Greenberg (National Consumers League) (by first-class mail)
Gigi Sohn (Public Knowledge) (by first-class mail)
Andrew Jay Schwartzman (Media Access Project) (by first-class mail)
Ken Reed (League of Fans) (by first-class mail)
Jane E. Mago (National Association of Broadcasters) (by first-class mail)
Gerard Waldron (Counsel for National Football League) (by first-class mail)
Robert A. Garrett (Counsel for Office of the Commissioner of Baseball) (by first-class mail)