



August 13, 2013

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

Re: MB Docket No. 10-71

Dear Ms. Dortch:

Once again, sports fans are being treated like a fumbled pigskin as giant broadcast and cable companies battle over retransmission consent terms. This time, millions of Time Warner Cable subscribers, from New York City to Los Angeles to Dallas, have missed NFL pre-season games and the PGA Championship, with additional NFL exhibition games and other action at risk in the days ahead. Just to make sure that sports fans cannot watch games online, CBS is blocking fans from using Time Warner Cable's broadband to get sports over the Internet. Of particular interest to this born-and-bred cheesehead -- and Green Bay Packers shareholder -- the Packers' pre-season games are being blacked out from fans in Milwaukee, Wisconsin.

It is time for the referee to blow the whistle. The Commission can and should do something immediately.

Sports Fans Coalition — as we did starting in 2010 — again calls for the FCC to prohibit the taking down of sporting events during retransmission consent disputes between broadcasters and their cable/satellite distributors.¹ Two basic principles support such an action.

First, sports are a unique form of programming, publicly subsidized by taxpayer funds and special interest carve-outs to civil and criminal liability. Billions of dollars in taxpayer money

¹ See *ex parte* letter from Sports Fans Coalition in this docket (June 14, 2010) (available at <http://apps.fcc.gov/ecfs/document/view?id=7020504885>).

have gone to support the construction of sports arenas around the country.² Sports leagues enjoy statutory exemptions from federal antitrust laws³ and do not pay a dime in federal taxes.⁴ Even the Commission has bestowed governmental largesse on sports leagues, creating the Sports Blackout Rule to support leagues' local blackout practices, despite the fact that Congress never authorized such a rule.⁵ Given the "public good" nature of sports programming, the leagues' licensees should not be permitted to abuse the very market power created on the backs of the American taxpayer and voter.

Second, the Commission long ago established an outright prohibition on taking down programming in some circumstances. Specifically, the Commission promulgated a rule that no cable operator may take down broadcast programming during so-called "sweeps" rating periods.⁶ The Commission simply can extend this concept to sports programming and establish a prohibition on the taking down of sports events by any party to a retransmission consent dispute.

² See Sports Fans Coalition, "In 2010 Sports Stadiums Cost Public \$10 Billion More Than Forecasted" (available at <http://sportsfans.org/2012/11/new-book-in-2010-sports-stadiums-cost-public-10-billion-more-than-forecasted/>). See also Tom Ferrey, South Bronx Neighborhood Taking Hit from New Stadium, ESPN THE MAGAZINE, Sep. 19, 2008, available at <http://sports.espn.go.com/mlb/news/story?id=3598021> (reporting that —with the state chipping in for garages and the federal government allowing the aggressive use of tax-free construction bonds, the total public subsidy has grown to \$656 million for the new Yankees Stadium); Patrick McGreevy, Environmental Exemptions OKd for Football Stadium in City of Industry, L.A. TIMES, Oct. 15, 2009, available at <http://articles.latimes.com/2009/oct/15/local/me-stadium15> (reporting that —the California Senate approved a measure . . . that exempts the [L.A. football stadium development] project from state environmental laws).

³ See 15 U.S.C. § 1291, Sports Broadcasting Act of 1961 (granting professional sports leagues an antitrust exemption for the collective negotiation of over-the-air broadcast rights to FCC-licensed broadcasters).

⁴ See Sen. Tom Coburn, M.D. (R-OK), Waste Book 2012 at 7 (the NFL classifies itself as a "non-profit" organization under IRC 501(c)(6), as do the NHL, PGA, and other professional sports organizations, costing taxpayers at least \$91 million annually); National Collegiate Athletic Association, NCAA's Tax-Exempt Status, <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Key+Issues/Commercialism/NCAA+tax+exempt+status> (— The NCAA is a nonprofit, higher education association that is exempted from federal income tax by section 509(c)(3) of the federal tax code).

⁵ 47 C.F.R. §§ 76.111, 76.127. At the request of Sports Fans Coalition and other public interest groups, the Commission has opened a proceeding to consider eliminating the Sports Blackout Rule. This would be another step towards ensuring that publicly subsidized sports programming is made more available to fans.

⁶ 47 C.F.R. § 76.1601; Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Broadcast Signal Carriage Issues, Report and Order, 8 FCC Rcd 2965 ¶¶ 108-09 (1993) (implementing the —sweeps rule).

As we said in 2010, sports fans do not care who wins or loses these disputes. Fans simply want to avoid being held hostage. Without sports fans, there would be no sports media economy. The fans buy the tickets, watch the games, pay for their sports tiers, purchase their sports packages, and wildly support their teams. The least they should expect from their government is a basic guarantee to get what they already have paid for.

Sincerely,

 /s/
David R. Goodfriend, Chairman
Sports Fans Coalition