February 24, 2014

VIA ELECTRONIC SUBMISSION
Federal Communications Commission

Subject: Comments on Proposed Sports Blackout Rules Elimination.
Docket ID: FCC-2014-0018-0001

My name is Reshaad Shirazi. I am currently a first year law student, attending the University of California Hastings College of the Law, in San Francisco, California. As a sports enthusiast and law student, I am an informed citizen with a deep interest in the ramifications of sports blackout rules. My opinion aligns with the FCC; the rationales for the sports blackout rules are outdated. Sports blackout rules no longer serves to ensure the continued availability of sports telecasts to the public. This is because the NFL is now the most popular and profitable professional sports league in the United States by a wide margin, and is the only professional sports league legitimately affected by the sports blackout rules. Therefore, I applaud the FCC and its decision to eliminate the sports blackout rules it enacted, beginning with the adoption of the cable sports blackout rule in 1975. I offer to explain why the FCC has adequate authority to eliminate sports blackout rules and why they are no longer needed. I also attempt to address counterarguments offered in defense of the sports blackout rules.

The Communications Act of 1934 ("Act") gives adequate authority to the FCC to eliminate the cable sports blackout rule, which the FCC itself enacted. Under Title I , Section 1 of the Act, the stated purpose for creating the FCC was to regulate interstate and foreign commerce in communication, in order to make available nation-wide communication service at

reasonable charges, as best as possible.[1] The stated rationale for enacting the cable sports blackout rule aligned with the purpose for the creation of the FCC. The cable sports blackout rule was enacted to ensure the availability of sports telecasts to the public, in furtherance of the Sports Broadcasting Act of 1961. However, because the rationale for enacting the blackout rule no longer fits the modern era, it likewise no longer serves Congress' purpose for the creation of the FCC.

Significantly, Congress never instructed the Commission to promulgate the cable sports blackout rule. However, Congress has not made an attempt to repeal or amend the sports blackout rules enacted by the FCC, and this Congressional inaction for 40 years signifies that FCC had the authority to enact the rule in the first place. Likewise, the FCC has the authority to eliminate the cable sports blackout rule under its general rulemaking power under the Act. As long as the FCC's action is not inconsistent with the Act[2], it certainly has the authority to eliminate a rule the FCC itself enacted. Although eliminating the cable sports blackout rule may not be in furtherance of the Act, it is not inconsistent with it. (I decline to comment on the FCC's authority to repeal the sports blackout rules for satellite and OVS).

The sports blackout rules are no longer necessary to protect the NFL's gate receipts. The NFL's annual revenue is 9.5 billion dollars, and its annual TV revenue is 5 billion dollars.[3] Other professional sports leagues' revenue in the U.S. pale in comparison.[4] As a matter of fact, the

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[1] Communications Act of 1934. Title I—General Provisions. Sec. 1. [47 U.S.C. 151] Purposes of Act, Creation of Federal Communications Commission.
[2] *Id.* Sec. 4(i) "The Commission may perform any and all acts . . . not inconsistent with this Act . . ."
[3] www.bleacherreport.com "NFL: Is the Most Popular Sports League in the USA Really Too Big to Fail?" By Soven Bery, Senior Analyst. July 17, 2013.
[4] *Id.*

NFL is now the most lucrative league in the world.[5] However, gate receipts account for less than 20% of total NFL revenue.[6] Contrarily, when the cable sports blackout rule was enacted, ticket sales were the predominate source of revenue.

However, "[t]he league's decades-old strategy for encouraging people to attend games, the blackout rule, has become counterproductive in some respects. Blackouts were meant to encourage ticket sales, but the strict guidelines are now looking outdated."[7] Therefore, team owners have collectively agreed to water down blackout rules, by allowing local broadcasts of NFL games for as few as 85% of tickets sold.[8] This demonstrates that blackout rules no longer help NFL ticket sales, especially considering that blackouts are exceedingly rare. On the other hand, it illustrates the important of television revenue, since NFL teams are unlikely to blackout a game if tickets are not completely sold out.

Regardless of the FCC's blackout rules, the NFL will continue to sellout a major portion of its tickets. Lifting the FCC's black out rules that prohibit cable or satellite operators to air the game in the local blackout zone, will not result in the NFL refusing to sell their rights to sports events to all distant stations. This is because the NFL is free to enter into private agreement with cable and satellite networks and can still effectively blackout, even paid for television stations, from airing home games in locally blacked out zones. Considering Direct TV has exclusive rights to NFL Sunday Ticket, the NFL will almost assuredly hike up the price for the rights to NFL Sunday Ticket once the FCC's blackout rules are eliminated, rather than refuse to sell the rights of locally blacked out games all together. From a business perspective, this is a much more lucrative option than choosing to protect ticket sales by refusing to sell rights to distant stations.

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[5] *Id.*
[6] www.business-news.top5.com "5 Facts About the Business of the NFL" By Steven John
[7] www.online.wsj.com "Game Changer: NFL Scrambles to Fill Seats" By Kevin Clark
[8] *Id.*

Considering television revenue accounts for a much greater proportion than ticket sales, the NFL would be absurd to go with the latter option. Therefore, FCC's blackout rules no longer serve to ensure the continued availability of sports telecast to the public to the greatest extent possible.

From a fan's perspective, black out rules serve no deterrence purposes for choosing to not attend a game. The availability of a local game on TV, has almost no impact on a fan's decision to attend the game. Fans do not suddenly decide they need to buy a ticket for the sole reason that a local blackout is pending. Whether or not a blackout is looming, a fan decides to buy tickets to the game: (1) based on their love for the team; (2) based on how well their team is doing; (3) based on the matchup and importance of the game; but NOT based on whether the game is going to be blacked out locally. Fans can simply stream the game online from European websites if the game is blacked out locally. If not, most people will assent to not watching their local team play that week. Since blackouts only occur in the rarest of instances, it no longer makes sense to have blackout rules. Most fans would be happy for the opportunity to watch a more exciting game during the week of a blackout, considering the only teams that have suffered blackouts in recent years are the least popular football franchises in the NFL.

Blacking out out local games may actually reduce ticket sales. If the local population is unable to see their team play on television, they are more likely to lose interest in the team. Certainly there will be die hard fans unaffected by this. But newer, or less enthusiastic fans will be exceedingly unlikely to keep up with their team's progress, and will thus be less likely to attend games during the season.

Furthermore, fans paying a substantial price for NFL Sunday Ticket, should not be denied the ability to watch their local teams play. Certainly, these fans are contributing to the NFL revenue stream, and should not be punished for their preference to watch the game at home,

or inability to go to the stadium. In fact, a substantial amount of funding for the brand new, state of the art stadiums are through local, public funds. It is almost insulting for NFL teams to ask the local public to pay for their stadium, and then deny the locals the opportunity to watch the games.

The fear that eliminating sports blackout rules will accelerate a migration of sports to pay TV, is unfounded. The NFL is the only remaining league that may possibly be affected by the blackout rules. But the free television stations, CBS, FOX, and NBC that televise NFL games, are not going to give up their rights to broadcast the NFL. NFL games are always among the most watched programs, and the NFL is continuing to grow in popularity. As long as CBS, FOX, and NBC remain free television networks, NFL games will be free to watch on Sundays.

In conclusion, the NFL no longer needs protection for their ticket sales. Likewise, the public no longer needs sports blackout rules to ensure their ability to watch the games, because the NFL will not refuse to sell their rights for the games to distant carriers. Therefore, the FCC no longer needs to regulate sports blackout rules to ensure public broadcasting of games. Clearly, the NFL wants to keep sports blackout rules, so they don’t have to privately contract with cable/satellite providers in order to blackout the games. However, the NFL makes 9.5 billion a year and can afford to spread the wealth. Consumers however would be better served if they can pay to watch a locally blacked out game. Therefore, eliminating sports blackout rules serves a consistent purpose for the rationale of the rules enactment in the first place; to ensure the maximum public availability of sports broadcasts.

Respectfully submitted,

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