

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of

PETITION FOR RULEMAKING TO ELIMINATE THE
SPORTS BLACKOUT RULE

MB Docket No. 12-3

REPLY COMMENTS OF DIRECTV, LLC

DIRECTV, LLC (“DIRECTV”) hereby responds briefly to one claim by the National Football League (“NFL”) related to the applicability of the sports blackout rule to satellite carriers. The NFL argues that, because Congress required the Commission to “apply” the sports blackout rule to satellite carriers in 1999, the Commission must leave the rules in place for satellite even if it revokes the rule for cable operators.¹ Under this theory, even if the cable “dog” disappears, the satellite “tail” must remain. We are aware of no evidence that Congress ever intended such an outcome. The plain language of the statute, moreover, compels the opposite result.

No statute requires the Commission to impose a sports blackout rule on cable operators. Rather, the Sports Broadcasting Act of 1961 permitted the Commission to impose such a rule, which it did in 1975.² As part of the Satellite Home Viewer

¹ Comments of the National Football League, MB Docket No. 12-3, at 19 (filed Feb. 24, 2014) (“NFL Comments”).

² *Amendment of Part 76 of the Commission’s Rules and Regulations Relative to Cable Television Systems and the Carriage of Sports Programs on Cable Television Systems*, 54 F.C.C. 2d 265 (1975).

Improvement Act of 1999 (“SHVIA”), Congress directed the Commission to “exten[d]” the sports blackout rule that then existed for cable to satellite.³

In doing so, Congress explicitly sought to treat satellite *the same* as cable. Congress thus chose not to create a sports blackout rule for satellite out of whole cloth. Rather, it mandated the “extension” of the cable rule to satellite.⁴ Specifically, the statute directs the Commission to “*apply* sports blackout protection . . . to the retransmission of the signals of network stations by satellite carriers to subscribers.”⁵

The Commission cannot continue to “apply” the cable sports blackout rule to satellite if the rule no longer exists. In the context of law and regulation, the word “apply” means “to employ for a limited purpose,” or “to put to use with a particular subject matter.”⁶ Were the Commission to eliminate the sports blackout rule for cable, nothing would remain to “employ” or “put into use.”⁷

³ The statute provides in relevant part as follows

(b) **Extension** of network nonduplication, syndicated exclusivity, and sports blackout to satellite retransmission.

(1) **Extension** of protections. Within 45 days after the date of the enactment of the Satellite Home Viewer Improvement Act of 1999 [enacted Nov. 29, 1999], the Commission shall commence a single rulemaking proceeding to establish regulations that—

(B) to the extent technically feasible and not economically prohibitive, **apply** sports blackout protection (47 CFR 76.67) to the retransmission of the signals of network stations by satellite carriers to subscribers.

(2) **Deadline for action.** The Commission shall complete all actions necessary to prescribe regulations required by this section so that the regulations shall become effective within 1 year after such date of enactment.

47 U.S.C. § 339(b) (emphasis added).

⁴ *Id.*

⁵ *Id.* § 339(b)(1)(B) (emphasis added).

⁶ BLACK’S LAW DICTIONARY 116 (9th ed. 2009); *see also, e.g., In re Black*, 225 B.R. 610, 620 (Bankr. M.D. La. 1998) (“‘Apply’ is defined, in pertinent part, by Black’s, as ‘to put, use, or

The legislative history confirms Congress’s intent to treat satellite and cable comparably. The Judiciary Committee explained that, “to the extent possible, the Commission should model its new regulations after those that currently apply to the cable industry.”⁸ The Commerce Committee also noted that “to the extent possible, local broadcast stations shall have *the same degree* of protection against duplication as they do in the context of cable distribution of other broadcast programming.”⁹

The plain language of the statute and the legislative history thus direct the Commission to apply the cable sports blackout rule to satellite only so long as there is such a rule to apply. We see no ambiguity on this point. Even if the Commission were to find some ambiguity in the statute, however, it has considerable deference to avoid what

refer, as suitable or relative; to coordinate language with a particular subject-matter; as to apply the words of a statute to a particular state of facts.’ ‘Apply’ is defined, in pertinent part, by Webster’s II New Riverside University Dictionary as ‘to put to or adapt for a special use’”) (internal modifications and citations omitted); THE COMPACT OXFORD ENGLISH DICTIONARY at 65 (Clarendon Press, 2d. ed. 1991) (defining “apply” as “to bring (a law, rule, test, principal, etc.) into contact with facts, to bring to bear practically, *to put into practical operation*”) (emphasis added).

⁷ The NFL places great weight on Congress’s use of the word “shall,” arguing that this word constitutes a “command” to the Commission. NFL Comments at 21, *citing Ass’n of Civilian Technicians, Montana Air Chapter No. 29 v. FLRA*, 22 F.3d 1150, 1153 (D.C. Cir. 1994). This is surely correct—but it does not answer the question of *what* Congress commanded the Commission to do. The Commission’s obligation under SHVIA expires when the Commission can no longer do what the statute says—“apply” a cable-specific rule to satellite. This commonsense reading of the statute also gives effect to every one of its words, contrary to the NFL’s contention. NFL Comments at 22, *citing Leocal v. Ashcroft*, 543 U.S. 1, 12 (2004). Allowing Congressional commands to expire on their own terms gives the words their proper meaning.

⁸ *Copyright Compulsory License Improvement Act*, H.R. Rep. No. 106-86, 106th Cong., 1st Sess. at 16 (Apr. 12, 1999).

⁹ *Satellite Competition and Consumer Protection Act*, H.R. Rep. No. 106-79, 106th Cong., 1st Sess. at 23 (Apr. 7, 1999) (emphasis added). Based on the context of the paragraph, the term “duplication” refers to the “duplication” at issue with respect to network nonduplication, syndicated exclusivity, and sports blackout rules. The report also describes later provisions specific to network nonduplication in the same way. *See id.* at 24 (“Subsection 712(b) is intended to operate as the *satellite equivalent* of the network non-duplication rules that currently apply to cable operators.”) (emphasis added).

would otherwise be an anomalous result. If a “statute is silent or ambiguous with respect to [a] specific issue, the question for the court is whether the agency’s answer is based on a permissible construction of the statute.”¹⁰ Unless the statute “unambiguously forecloses the agency’s interpretation,” a court must “defer to that interpretation so long as it is reasonable.”¹¹ SHVIA did not *unambiguously* direct the Commission to apply the sports blackout rule to satellite but not cable. The Commission is thus under no obligation to interpret it as doing so.

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¹⁰ *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843, 104 S.Ct. 2778, 2782, (1984); *see also City of Arlington, Tex. v. F.C.C.*, 133 S. Ct. 1863, 1866 (2013) (confirming *Chevron* deference even in the case of so-called “jurisdictional” questions).

¹¹ *Nat’l Cable and Tel. Ass’n. v. F.C.C.*, 567 F.3d 659, 663 (D.C. Cir. 2009).