

# COVINGTON & BURLING LLP

1201 PENNSYLVANIA AVENUE NW  
WASHINGTON, DC 20004-2401  
TEL 202.662.6000  
FAX 202.662.6291  
WWW.COV.COM

BEIJING  
BRUSSELS  
LONDON  
NEW YORK  
SAN DIEGO  
SAN FRANCISCO  
SILICON VALLEY  
WASHINGTON

GERARD J. WALDRON  
TEL 202.662.5360  
GWALDRON@COV.COM

June 5, 2014

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: *MB Docket No. 12-3 -- Ex parte meeting*

On June 3, 2014, Adolpho Birch and Ken Edmonds with National Football League (“NFL”) and the undersigned, as counsel for the League, along with Joe Briggs, in-house counsel to the National Football League Players Association (“NFLPA”) and Richard Metzger of Lawler, Metzger, Keeney & Logan, outside counsel for the NFLPA, met with Sarah Whitesell, Mary Beth Murphy, Steve Broeckart, and Kathy Berthot with the Media Bureau and Jonathan Levy from the Office of Strategic Planning to discuss the League’s stadium policy and how the FCC’s sports blackout rule serves the public interest by promoting popular sports to remain on broadcast television.

NFL representatives began by explaining the League’s stadium policy, which serves to balance the League’s two objectives of maximizing the in-stadium experience and engaging our fans through media outlets. They stated that the policy has been adjusted over the years and that the League works with clubs to make blackouts less likely by giving teams the ability to lower the threshold that determines a sellout. They emphasized that no one wants a blackout but that the policy serves the long-term interest of the fans, the players, and the clubs. They cited that the number of blackouts has dropped dramatically and attendance and viewership have increased over the past few decades, and that the League has taken a variety of steps to accomplish that goal but it sees the blackout rule as a contributing factor to that success.

They then explained how the League’s stadium policy benefits the fans. It helps keep NFL games on free broadcast television. NFL is the only sport in which the fans have access to all of the games of their home team without having to pay an expensive monthly fee for cable or satellite. NFL representatives said that serves the public interest by making available premium content to the 60 million Americans who rely on free TV, and they asserted that among “cord cutters” and “cord nevers” a disproportionate amount of free TV watching is live sports. Thus, the current system works well for the clubs, for the players, and for the fans, and the FCC should not risk altering that system. With the rule in place, it is easy to see NFL games on free, over-the-air television for many years to come. If the FCC repeals the rule, NFL representatives

Ms. Marlene Dortch  
June 5, 2014

agreed with the view that no one can predict with confidence whether sports will remain on free TV in the future.

The NFLPA representatives stated that players have become involved in this issue because the NFL is the most popular professional sport in the country, and the current system fosters a great stadium experience for the fans and the players, and ensures that all games, both regular season and playoff, are offered on free, over the air television. They emphasized that the current system is working for the fans and it makes no sense to change the rules that have produced that successful result over many years. The NFL representatives also noted that the players receive a financial benefit when the stadiums are full because they have negotiated a percentage of stadium revenue for players' salaries. Stadium workers, concession workers, parking attendants, hotel employees and many others also benefit from a full stadium. Finally, they said that the players benefit from a stadium that is full, supportive, excited and engaged.

The discussion then turned to some of the issues that were raised in the NPRM or in the record. On the point that the recent reduction of blackouts suggests that the rule should be repealed, NFL representatives countered that we see that as a sign that the ecosystem is working successfully. We stressed that it is the League's business judgment that its blackout policy and the Commission's rule has contributed to that success. We emphasized that the Commission should take the long view, as the League has, on how various factors influence the overall availability of sports programming on free TV. In that long view, the League's blackout policy and the FCC's rule serve to shape fans' and clubs' behavior over time, and the result over these many years is a system that works very well to deliver high quality content to consumers for free. We next raised the issue of gate receipts and stated that though gate receipts as a percentage of League revenue has decreased since the rule was first adopted, the gate still counts for roughly 25% of revenues and thus remains important to clubs and players alike. Gate receipts also remain an important source of tax revenue for communities nationwide.

Lastly, NFL representatives turned to whether the League could accomplish its goal to control its games and stadium policy through private contract. We explained that the League has no privity of contract with local affiliates, so it has no ability to control whether an affiliate allows importation of its signal. In response to a staff question, we stressed that the rule is not a substitute for contract negotiations with the networks, since even if the networks had an incentive to negotiate they could not be bound in contract to ensure blackouts unless they first locked down a provision in each of their two hundred or so affiliation agreements to effectuate that goal, but those contracts have staggered terms and a variety of provisions. With respect to MVPDs, we explained that the League does have agreements with them for carriage of NFL Network, but there is hardly any leverage: one major MVPD carriage agreement came only after a Section 616 complaint and associated litigation, and another was reached only after eight years of highly contentious negotiations. As documented in the record by the Rolapp Declaration (and unrefuted), the League would not be able to accomplish its blackout policy through efficient negotiations with MVPDs.

COVINGTON & BURLING LLP

Ms. Marlene Dortch  
June 5, 2014

The staff also asked about the territory of blackouts. The League's stadium policy provides that the blackout should apply to both the primary and secondary markets of the home territory of an affected team. This policy generally covers a broadcaster with significant signal penetration within 75 miles of the game site. Thus, the network contracts stipulate that if a game is blacked out, the network will provide a substitute game to affiliates located within 75 miles of the game site. Under the FCC's sports blackout rule, a league may demand that a cable system black out the importation of a blacked-out game within a zone of 35 miles surrounding the reference point of the station's community of license in which the game takes place.<sup>1</sup> Accordingly, the Commission's sports blackout rule covers a smaller territory than the League's stadium policy.

Please direct any questions to the undersigned.

Sincerely,

/s/

Gerard J. Waldron  
*Counsel to National Football League*

cc: Ms. Sarah Whitesell  
Ms. Mary Beth Murphy  
Mr. Steve Broeckaert  
Ms. Kathy Berthot  
Mr. Jonathan Levy  
Mr. Chris Heitzig

---

<sup>1</sup> 47 C.F.R. §§ 76.111(a); 76.5(e).