

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
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	)	
Amendment of the Commission’s Rules Related to Retransmission Consent	)	MB Docket No. 10-71
	)	
	)	
Petition for Rulemaking to Eliminate the Sports Blackout Rule	)	MB Docket No. 12-3
	)	
	)	

**COMMENTS OF NATIONAL FOOTBALL LEAGUE**

The National Football League (“NFL”) urges the Commission to reject proposals to eliminate the syndicated exclusivity and network non-duplication rules (“exclusivity rules”).<sup>1</sup> The exclusivity rules are essential to the continued success of the broadcast business model that enables providers of high-quality content to reach tens of millions of Americans on free, over-the-air television. Broadcasters have long negotiated with networks and other providers for the exclusive rights to programming in a market. Like the sports blackout rule, the exclusivity rules are essential to ensuring that cable and satellite carriers do not circumvent these agreements by importing distant signals. Because these rules all preserve the integrity of privately negotiated programming contracts, the Commission should (a) continue its practice of considering all three rules in a single proceeding, and (b) conclude that proceeding by finding all of these rules continue to serve the public interest.

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<sup>1</sup> *Network Non-Duplication and Syndicated Exclusivity Rules*, Report and Order and Further Notice of Proposed Rulemaking in MB Docket No. 10-71 (“FNPRM”) (March 31, 2014).

**I. ELIMINATING THE EXCLUSIVITY RULES WOULD UNDERMINE THE SYSTEM THAT DELIVERS MILLIONS OF AMERICANS FREE, OVER-THE-AIR TELEVISION**

Elimination of the exclusivity rules would undermine the privately negotiated agreements that enable broadcasters to provide high-quality programming -- including professional sports -- to tens of millions of viewers at no charge. Repealing the rules could lead to the migration of some of the most popular programs from broadcast to pay television.

The NFL strongly supports policies that promote over-the-air broadcasting. Local broadcasters enable the NFL to provide all regular-season and playoff games at absolutely no cost to the consumer. No other medium reaches such a wide range of fans. Moreover, broadcasters have long demonstrated their dedication to localism, including in their sports coverage. Broadcasters routinely air pre-game and post-game shows that focus on the home team. This localism connects fans with their home teams and markedly improves the viewing experience.

Exclusive programming rights are a fundamental component of broadcasters' advertising-supported business model. The vast majority of broadcasters' revenue comes from local advertising,<sup>2</sup> and advertising revenues are tied to viewership. If viewers in a local market can receive the same program on multiple channels, a broadcast station's viewership -- and advertising revenue -- will decrease. For this reason, broadcast stations ensure that their affiliation agreements with networks include exclusive rights to network programming -- including professional sports.

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<sup>2</sup> *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fifteenth Report, 28 FCC Rcd 10496, 10583 (July 22, 2013).

Because cable and satellite carriers are not parties to the affiliation agreements, they are not bound by the agreements' exclusivity provisions. In other words, the affiliation agreements do not prevent MVPDs from importing distant signals of duplicative programming, thereby diluting viewership of the local television station. And because federal copyright law grants MVPDs a compulsory license for distant signals,<sup>3</sup> they have significant leverage when negotiating their retransmission consent agreements with broadcasters. Accordingly, the exclusivity rules are absolutely critical to prevent cable and satellite carriers from importing distant signals.

The NFL has confronted a similar problem with its enforcement of its sports blackout policy, which is part of the NFL's agreements with the broadcast networks. The policy allows for blackouts of games in the local market of a home team if the game is not sold out 72 hours in advance. This longstanding policy, though rarely invoked, promotes in-stadium attendance and fan engagement.<sup>4</sup> Packed stadiums ensure a high-quality experience both for fans who attend games and who view the games on television.<sup>5</sup> But cable and satellite carriers are not parties to the agreements between the NFL and the broadcast networks. The NFL's contracts with broadcast networks do not require the networks to ensure that their affiliates prohibit cable and satellite providers from retransmitting their signals, including blacked-out NFL games into a local market.<sup>6</sup> And, as the Commission has acknowledged, the Copyright Act's compulsory licensing system makes it difficult for sports leagues to use private contracts to

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<sup>3</sup> 17 U.S.C. §§ 111, and 119, and 122.

<sup>4</sup> Comments of National Football League, *In the Matter of Petition for Rulemaking to Eliminate the Sports Blackout Rule*, MB Docket No. 12-3 at 3 (Feb. 24, 2014).

<sup>5</sup> *Id.* at 13.

<sup>6</sup> *Id.* at 17.

control the transmission of their games.<sup>7</sup> Accordingly, the Commission's sports blackout rule is necessary to prevent MVPDs from circumventing the sports blackout policy that the NFL and broadcast networks negotiated.<sup>8</sup>

The exclusivity rules, like the sports blackout rule, promote the integrity of privately negotiated contractual provisions that preserve the free broadcast of high-quality programming. Eliminating the exclusivity rules would reduce the ability of local broadcasters to provide high-value programming, such as professional sports. It defies all logic -- and the public interest -- for the Commission to vote for a regulatory change that could result in the migration of popular programs from free broadcast television to pay services.

## **II. THE COMMISSION SHOULD EVALUATE THE EXCLUSIVITY RULES AND THE SPORTS BLACKOUT RULE IN THE SAME PROCEEDING**

The Commission should examine the exclusivity rules and the sports blackout rule in the same proceeding. As demonstrated above, the exclusivity rules and the sports blackout rule are both designed to prevent cable and satellite carriers from circumventing private contracts that promote free, over-the-air broadcast television. As such, the Commission should not evaluate repeal or modification of each of the rules in a vacuum.

Indeed, the Commission has long considered the exclusivity rules and sports blackout rule in a single proceeding. In 2000, the Commission adopted the exclusivity rules *and* the sports blackout rules for satellite carriers in a single proceeding. The Commission's rationale was the same for all three rules:

[t]he network non-duplication, syndicated exclusivity, and sports blackout rules . . . as applied in the cable context, generally protect

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<sup>7</sup> *Id.* at 15-16.

<sup>8</sup> *Id.* at 14.

exclusive contractual rights that have been negotiated between program providers and broadcasters or other rights holders. These exclusive contractual rights are potentially threatened by cable systems that are capable of importing duplicative programming from distant sources beyond the control of the contracting parties.”<sup>9</sup>

The Commission reached a similar conclusion in 2005, when it concluded that “[l]ike the network non-duplication and syndicated exclusivity rules, the sports blackout rule is intended to ensure that MVPDs do not undermine contractual arrangements between broadcasters and sports programming rights holders by importing sports programming that is subject to blackout in the local market.”<sup>10</sup> Again, the Commission considered the continued need for all three of these rules in a single report.

The Commission should continue its practice of evaluating the exclusivity rules and the sports blackout rule in the same proceeding. We are unaware of any changes that would necessitate separate reviews. A comprehensive evaluation of all three rules together would provide the Commission with a more complete view of the business model that underlies free, over-the-air broadcast television, and demonstrate the continued need for Commission rules that

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<sup>9</sup> See *In re Implementation of the Satellite Home Viewer Improvement Act of 1999*, Report and Order, 15 FCC Rcd 21688, 21889, ¶ 3 (2000) (emphasis added); see also *id.* at 21699, ¶ 22 (“Congress directed the Commission to make the [satellite] rules ‘as similar as possible’ to the cable rules and to protect the contractual exclusivity rights purchased by broadcasters and sold by program rights holders.”).

<sup>10</sup> *Retransmission Consent and Exclusivity Rules: Report to Congress Pursuant to Section 208 of the Satellite Home Viewer Extension and Reauthorization Act of 2004*, 2005 WL 2206070, at \*18, ¶ 58 (Sept. 8, 2005).

support that model. Moreover, consolidation of related proceedings increases administrative efficiency and reduces costs both for commenters and the agency.<sup>11</sup>

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As the provider of some of the most popular programming on broadcast television, the NFL has a strong interest in ensuring the continued success of local broadcasters nationwide. Accordingly, we urge the Commission to reject the misguided proposals to eliminate the exclusivity rules, which promote the availability of popular programming to every American with a television set and antenna, regardless of her ability to afford cable or satellite service. The Commission should combine this proceeding with its examination of the sports blackout rule, and seriously consider whether it wants to change three rules that have been critical to the success of free local broadcasting.

Respectfully submitted,



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<sup>11</sup> See, e.g., *In re Telecomm. Relay Servs. & Speech-To-Speech Servs.*, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, 18 FCC Rcd 12379, 12383, n.5 (2003) (consolidating proceedings that “raise many of the same issues, cover the same statutory authority . . . and involve comments by or on behalf of the same industries, consumers, [] programs, and [] providers.”).