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July 17, 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 July 15, 2014, Ken Edmonds with National Football League (“NFL”) and the undersigned, as counsel for the League, along with Hal Singer and Andrew Card with Economists, Inc., and Richard Metzger and Pamela Miranda of Lawler, Metzger, Keeney & Logan, outside counsel to the National Football League Players Association (“NFLPA”), met with Mary Beth Murphy, Steve Broeckart, Nancy Murphy, and Kathy Berthot with the Media Bureau and Jonathan Levy and Chris Heitzig, from the Office of Strategic Planning, to discuss the appropriate economic analysis for assessing the FCC’s sports blackout rule (“SBR”) and whether the rule serves the public interest.

Dr. Singer, who filed a declaration with the NFL’s initial comments in this proceeding, used the attached presentation to discuss the appropriate framework to (1) weigh the public benefits and costs of repealing the rule and (2) weigh the private benefits and costs to the NFL of licensing its television rights to broadcasters in the absence of the SBR. Dr. Singer also reviewed with the staff the economic literature on the subject of the impact of the rule on consumer welfare. His analysis offered the following conclusions:

- As recognized by the NFL, the NAB, and the FCC itself, the SBR supports NFL’s ability to maintain its “free TV” model.
- The Sports Fan Coalition and its supporters have no basis to suggest that contracting costs in the absence of the SBR would be sufficiently small so as to permit the NFL to recapture the full benefits of exclusivity in their dealings with broadcasters, and therefore to continue licensing its television rights to broadcasters.
- Contrary to the assertion by the Sports Fan Coalition and its supporters, the NFL’s blackout policy lifts attendance and gate revenues. Accordingly, the loss in value of the NFL’s television rights associated with the removal of the SBR would be compounded by the loss in gate revenues—the NFL would have little incentive to continue the private blackout policy if distant signals could be imported by cable

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operators—further pushing the NFL in the direction of licensing its television rights to cable networks.

- Moreover, the NFL's private blackout policy links gate revenues with local advertising revenues, and thereby tempers the clubs' incentives to raise ticket prices.
- For these reasons, from an economic perspective, the net benefits of SBR and NFL's private blackout policy are positive.

Thus, Dr. Singer's economic analysis supports the conclusion that retention of the SBR is in the public interest. Please direct any questions to the undersigned.

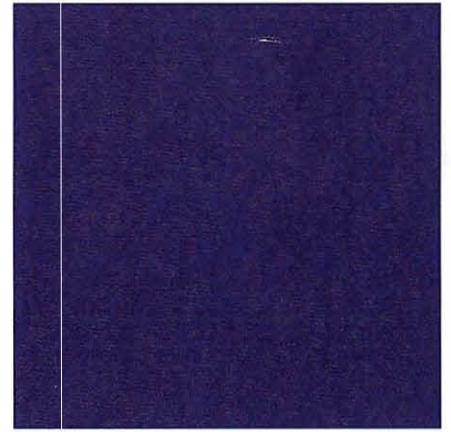
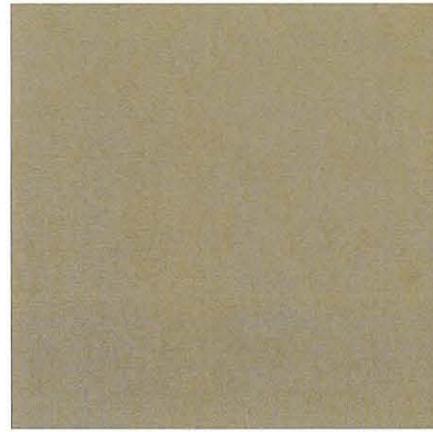
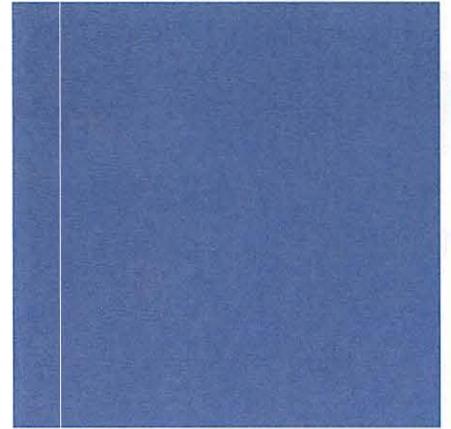
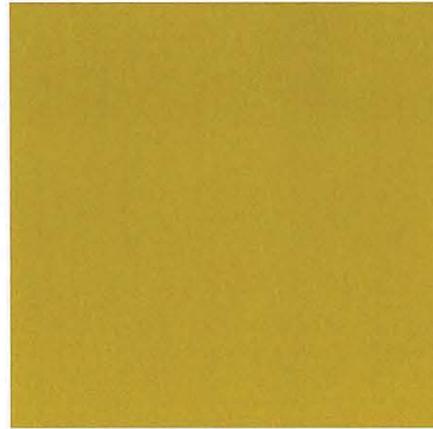
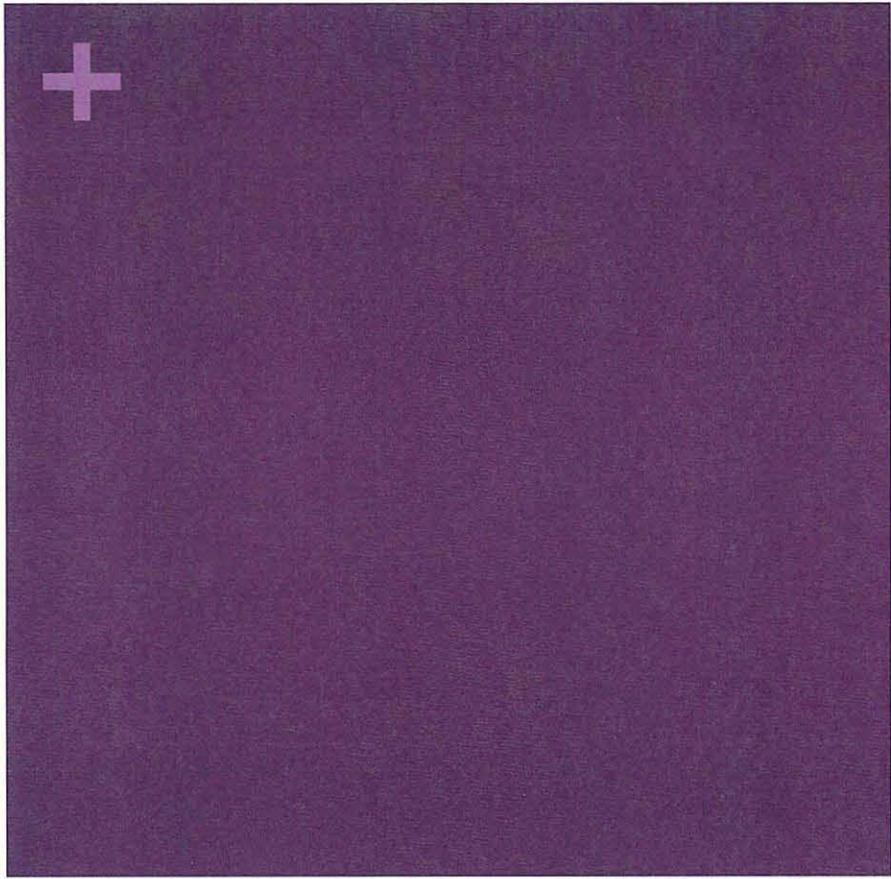
Sincerely,

/s/

Gerard J. Waldron
Counsel for National Football League

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

Attachment



Analysis of the FCC's Sports Blackout Rules (SBR)

Hal J. Singer

Economists Incorporated

+ Net Benefits of SBR and NFL's Private Blackout Policy Are Positive

■ Benefits

- Private: Lifts attendance; lifts viewership and advertising revenues; reduces contracting costs (SBR)
- Social: Tempers ticket prices; sustains “free TV” model, which spares potentially 20% of video homes from having to buy cable subscription (SBR)

■ Costs

- Social: Consumer harm associated with missing a few blacked out games
- Status quo should be preserved so long as benefits exceed the costs

+ FCC's SBR and the NFL's Private Blackout Policy

- NFL private blackout policy prohibits broadcaster from televising a game in the home team's local television market if that game does not sell out 72 hours before game time
 - Modified to allow teams that sell 85 percent of available stadium capacity to qualify as a sell out with sufficient notice
- Without the SBR, MVPDs could circumvent NFL's private blackout policy by importing distant signals carrying blacked-out games; SBR solves an otherwise complex contracting problem
- Takeaway: NFL's private blackout policy would persist in the absence of the SBR to the extent it was still profitable

+ SBR Supports NFL's Ability to Maintain Its "Free TV" Model

■ Singer Evidence

- Reduces contracting costs; obviates need to contract with RSNs to avoid compulsory license
- Importance of SBR to sustaining "Free TV" model: Filings of the NFL, MLB, NAB, 2005 FCC testimony to Congress
- Lack of **exclusivity** for local broadcasters would reduce the value of NFL telecasts to advertisers, which in turn reduces value that broadcasters would pay for NFL rights
 - NAB Comments: "If the Commission were to curtail broadcasters ability to enforce that exclusivity, it would weaken broadcasters capacity to attract advertising, thereby reducing their ability to pay for popular programming generally and to invest in local programming specifically." (at 7)
- Up to 20% of homes rely on OTA broadcasting in 2013

■ Sports Economists' 2012 Report

- Claim that because blackouts allegedly do not affect attendance or in-stadium revenues, NFL would have no incentive to switch to pay-TV (at 17)
- Further claim that if the NFL were to migrate away from a major network (such as FOX or ABC), that network would be in a position to sponsor and televise an entirely new (currently non-existent) football league (at 17-18)

■ Sports Economists' 2014 Report

- By assuming the value of exclusivity can be restored through contracting, they offer a misleading depiction of NFL's calculus: "It must also be that contracting costs [in absence of SBR] would be large enough to outweigh the benefits created for the NFL by its OTA broadcasts [vis-à-vis a Pay TV model]." (at 8)

+ NFL's Calculus for Switching from "Free-TV Model"

- Let OTA' indicate a world without SBR and OTA indicate a world with SBR
 - Assume that no amount of contracting under OTA' can restore full value of exclusivity
 - Brian Rolapp Decl. para. 5
- NFL would switch to pay TV without SBR if (1)
 - $\text{Value TV (pay TV)} + \text{Value Gate (pay TV)} > \text{Value TV (OTA')} + \text{Value Gate (OTA')}$
- We also know that (2)
 - $\text{Value Gate (pay TV)} = \text{Value Gate (OTA)} > \text{Value Gate (OTA')}$ by Putsis & Sen
- Using (2) allows us to simplify condition (1)—namely, NFL would switch to pay TV if (3)
 - $\text{Value TV (pay TV)} + \text{Increase in Gate Revenue} > \text{Value TV (OTA')}$
 - Which is true so long as lost value of exclusivity (as move from OTA to OTA') exceeds loss in viewers (as move from OTA to pay TV)
 - Loss in viewers is mitigated to extent that some OTA homes would subscribe to pay TV to follow NFL

+ NFL's Blackout Policy Lifts Attendance

- Singer Evidence
 - Putsis & Sen (2000) (estimating an increase in gameday ticket sales of 11k and a decrease in no shows by 5k)
 - Banks and large corporations buying large blocks of tickets to avoid blackouts
 - NFL executives noting that spurring attendance was a primary reason for the existence of the policy
 - Sports Economists' reference to clubs' use of "strategic marketing tools"

- Sports Economists' 2012 Report
 - Claim no "significant effect" on ticket sales (at 13-14)
 - Alternatively, claim that in-stadium revenues are too small to matter in comparison to television revenues (at 13)
 - *But see* Singer (showing in-stadium revenues account for one quarter of total revenues)

- Sports Economists' 2014 Report
 - SBR "forces a few hundred people to attend a game . . ." (at 2)
 - Statistically significant but not economically significant (at 3)
 - Claim that *incremental* stadium revenues attributable to NFL's blackout policy are too small to matter (at 7)

+ NFL's Blackout Policy Tempers Clubs' Incentive to Raise Ticket Prices

■ Singer Evidence

- Clubs leaving money on the table by pricing at inelastic portion of demand
 - Winfree (2008); Putsis & Sen (2000)
- Private blackout policy puts local television advertising revenue at risk in the event that a game does not sell out
 - Absent the NFL's private blackout policy, prices would likely be higher
- Greater attendance makes telecasts more appealing, which supports even greater advertising revenue
 - DeSerpa & Faith (1996); Dietl & Dusch (2009)

■ Sports Economists' 2012 Report

- Implied absent the NFL's private blackout policy, ticket prices would be lower (at 13-14)

■ Sports Economists' 2014 Report

- Reduced ticket prices are a "market alternative" to the SBR (at 3, 9)

+ NFL's Private Blackout Policy Generates Negligible Output Effects

- The constraint rarely binds and does so with decreasing frequency
 - In 1996, 78 (of 240) games were blacked out
 - In 2011, 16 (of 256) games were blacked out
 - In 2012, 15 (of 256) games were blacked out
- That there are few blackouts implies that the policy is working (by stimulating demand), not that the policy is unnecessary