



NFL PLAYERS
ASSOCIATION

July 24, 2014

By Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Amendment of the Commission's Rules Related to Retransmission Consent*, MB Docket No. 10-71; *Eliminating the Sports Blackout Rule*, MB Docket No. 12-3

Dear Ms. Dortch:

The National Football League Players Association (“NFLPA”) supports the retention of the network non-duplication rule and the sports blackout rule. Repealing either rule will threaten the continued broadcast of NFL games on free, over-the-air television, hurting football fans and undermining the business model that has made National Football League (“NFL”) games so popular and widely viewed.¹ The NFL is the only major sports league in which every team offers to broadcast all of its games over free local television stations so that the games are available to fans who do not purchase cable or satellite television services. Eliminating one or both of these rules will inevitably push the NFL to consider moving its games to a pay-TV platform.

The network non-duplication rule enables the NFL, through its arrangements with over-the-air, commercial television networks, to offer a local network affiliate the *exclusive right* to broadcast all of the games of its local NFL team, subject to limited exceptions. The rule protects this exclusivity by preventing multichannel video programming distributors (“MVPDs”) from importing into the local market a distant network affiliate’s broadcast of the same game. As a result, every consumer in the local market who watches the NFL game views the local network affiliate’s broadcast, either over the air or as it is retransmitted by MVPDs. This exclusivity

¹ Repealing the sports blackout rule would create an economic incentive for the NFL to remove professional football from free, over-the-air television because it would allow multichannel video programming distributors to import blacked out games from other markets and eliminate the NFL’s ability to control the distribution of its content. *See, e.g.*, Comments of the National Football League at 3-4 (“NFL Comments”) (unless otherwise noted, all comments were filed in MB Docket No. 10-71 on June 26, 2014); Reply Comments of the National Association of Broadcasters, MB Docket No. 12-3, at 2 (March 25, 2014) (“NAB Reply Comments”) (asserting that the sports blackout rule “ensure[s] the widespread availability of sports on free, local television”); Declaration of Hal J. Singer, attached to the Comments of the National Football League, MB Docket No. 12-3, at 3 (Feb. 24, 2014) (finding, through an economic analysis, that the sports blackout rule facilitates “the NFL’s ability to maintain its ‘free-TV’ model”).

maximizes the value of the NFL’s programming by allowing the local affiliate to collect advertising revenues that reflect the station’s status as the sole distributor of televised professional football games in the market. Abandoning exclusivity and allowing MVPDs to import distant, duplicative broadcasts would fragment local viewership and significantly reduce the economic value of broadcasting NFL games on free, over-the-air television by networks and local broadcasters.²

Eliminating the network non-duplication rule also would threaten the viability of the current broadcast economic model, which benefits local broadcasters, content providers, advertisers, and consumers. As Drs. Israel and Shampine explain, the network non-duplication rule supports this economic model by creating “incentives to invest in local content, which enhances competition among broadcasters and between broadcasters and other content providers, thus increasing viewer and advertiser welfare.”³ Similarly, NBCUniversal Media, LLC points out that quality programming attracts viewers, “creating a virtuous cycle that increases . . . advertising revenues and allows investment in both local news and information programming and network programming, including the broadcast rights for major sports and special events programming such as NFL games and the Olympics.”⁴ Without the network non-duplication rule, however, the NFL would almost certainly be forced to examine licensing its programming to pay channels in order to regain control over the distribution of its games and restore exclusivity.

Further, the network non-duplication rule plainly benefits consumers because it has enabled the continued availability of NFL games on free, over-the-air television. If the NFL were to move its games to a pay television platform, a significant segment of the American

² Comments of the National Association of Broadcasters at 17 (“NAB Comments”) (“If advertisers cannot be assured that their ads will reach local audiences without dilution or diminution by virtue of the retransmission of competing (out-of-market) programming streams, local broadcasters will find it increasingly difficult to raise the capital necessary to produce and provide local programming.”); NFL Comments at 2 (“The vast majority of broadcasters’ revenue comes from local advertising, 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.”); Comments of NBCUniversal Media, LLC at 3 (“NBCUniversal Comments”) (“[N]onduplication protection within a station’s local television market allows the station to avoid the audience fragmentation that occurs when multiple network-affiliated stations with duplicative programming serve the same market. By maximizing local viewership in this manner, stations’ advertising revenues are increased . . .”).

³ Declaration of Mark Israel and Allan Shampine, attached to NAB Comments at Appendix B, ¶ 3.

⁴ NBCUniversal Comments at 3.

public (one estimate is up to 20 percent)⁵ would no longer be able to watch professional football games. The availability of virtually all NFL games to the public via free, over-the-air television contrasts sharply with the unavailability of other professional sports programming. One is hard-pressed to understand how the public interest would be served by creating an incentive for the NFL to adopt a business model that has driven other professional sports leagues to pay-TV platforms.

Finally, as others have properly observed, the network non-duplication rule is part of a complex regulatory regime that should not be modified in a vacuum.⁶ Specifically, the process of distributing video content on television is subject to interrelated regulatory and competitive forces including copyright law,⁷ retransmission consent negotiations, federal statutes,⁸ and the FCC's exclusivity rules. Eliminating the network non-duplication rule without adjusting the other elements of the regulatory scheme would upset the delicate balance that has supported local programming and made NFL games the success that they are.

For these reasons, the NFLPA urges the Commission to retain the network non-duplication rule.

Respectfully submitted,

/s/ Joe D. Briggs

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Public Policy Counsel

⁵ NAB Reply Comments at n.5 (citing GfK, "Home Technology Monitor 2013 Ownership Survey and Trend Report" (Spring 2013) (estimating that 19.3 percent of television households relied solely on over-the-air broadcast television)).

⁶ Comments of the CBS Television Network Affiliates Association at 12 ("Given the intertwined nature of exclusivity and copyright and the harm that would arise from eliminating only one piece of the framework, the Commission should defer to Congress."); NAB Comments at 10 (noting the Commission's acknowledgement "that the Exclusivity Rules are tightly interwoven with other statutory and regulatory provisions that make up the 'mosaic' of rules governing the distribution of television programming" and concluding that any "alteration of the Exclusivity Rules must carefully account for the relevant statutes (and other regulations) that might be impacted by regulatory changes"); NBCUniversal Comments at 4 (describing the rule as an "integral part of the complex web of compulsory copyright licenses, retransmission consent rules and program exclusivity rights that govern the distribution of broadcast programming by [MVPDs]").

⁷ See 17 U.S.C. § 111.

⁸ See, e.g., Satellite Home Viewer Act of 1988, Pub. L. No. 100-667, 102 Stat. 3935 (1988); 47 U.S.C § 339 (carriage of distant television stations by satellite carriers).