

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

**In the Matter of** )  
 )  
**SPORTS BLACKOUT RULES** ) **MB Docket No. 12-3**  
 )

**COMMENTS OF THE  
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

The Independent Telephone & Telecommunications Alliance (“ITTA”) hereby submits its comments in response to the *Notice of Proposed Rulemaking* (“NPRM”) issued by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceeding.<sup>1</sup> In the *NPRM*, the Commission proposes to eliminate its sports blackout rules to leave sports carriage issues to private marketplace negotiations and do away with unnecessary regulation.<sup>2</sup>

ITTA commends the Commission for moving forward on its strategy to identify and eliminate outdated FCC rules, consistent with the Commission’s own objectives and those set forth by the current Administration.<sup>3</sup> The sports blackout rules are ripe for retrospective analysis, and the record in this proceeding makes clear that they are no longer necessary or relevant (if ever they were) given marketplace changes since the rules were adopted. ITTA supports the Commission’s proposal to eliminate the sports blackout rules, and encourages the FCC to extend such relief to all multichannel video programming distributors (“MVPDs”).<sup>4</sup>

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<sup>1</sup> *In the Matter of Sports Blackout Rules*, MB Docket No. 12-3, Notice of Proposed Rulemaking, FCC 13-162 (rel. Dec. 18, 2013) (“NPRM”).

<sup>2</sup> *See id.* at ¶ 29.

<sup>3</sup> *See* Exec. Order No. 13,579, 76 Fed. Reg. 41,587 (July 11, 2011) (“EO 13579”); *Federal Communications Commission, Final Plan for Retrospective Analysis of Existing Rules*, May 18, 2012, available at: [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-314166A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-314166A1.pdf) (last visited: Feb. 20, 2014) (“Final Plan”).

<sup>4</sup> ITTA continues to believe that the Commission’s video policies, particularly those relating to

## DISCUSSION

The Commission adopted the sports blackout rules nearly four decades ago when game ticket sales were the primary source of revenue for sports leagues.<sup>5</sup> The rules were intended to address concerns that MVPDs' importation of a distant signal carrying a blacked-out sports event could result in lost revenue from ticket sales, which might cause sports leagues to expand the reach of blackouts by refusing to sell their rights to sports events to all distant stations.<sup>6</sup> The rationale underlying the rules was to ensure to the greatest extent possible the continued availability of sports telecasts to interested viewers by prohibiting MVPDs from retransmitting, within a protected local blackout zone, the signal of a distant broadcast station carrying a live sporting event if the event was not available live on a local broadcast television station.<sup>7</sup> Changes in the sports industry since the sports blackout rules were adopted, however, have rendered the rules unnecessary to ensure the overall availability of sports programming to the general public.

The Commission issued this *NPRM* to promote the goals of a 2011 Executive Order that encourages independent regulatory agencies to conduct a "retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned."<sup>8</sup> The Commission has indicated that in conducting this assessment, it will focus on regulations that,

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retransmission consent, are in dire need of reform, and that the Commission should move forward expeditiously to restore balance to a marketplace that unjustly favors broadcasters due to ever-increasing competition among distributors of video programming.

<sup>5</sup> See *NPRM* at ¶ 1.

<sup>6</sup> See *id.*

<sup>7</sup> See *id.*

<sup>8</sup> EO 13579, § 2.

among other things, have been affected by changes in market structure, have been identified by affected stakeholders as needing revision, and that may result in greater net benefits to the public if modified or removed.<sup>9</sup> With respect to the sports blackout rules, all of these criteria are met.

The record in this proceeding has established that the sports blackout rules are no longer relevant given changes to the video distribution marketplace in the 40 years since the rules were originally adopted. The Commission's purpose in adopting the sports blackout rules in 1975 was to protect sports teams' primary revenue stream – home gate receipts – while promoting the broadest availability of sports programming to interested viewers outside the team's home territory. By preventing cable operators from importing a distant signal of a television station carrying the home game of a sports team that had elected to black out the game in its home territory, the Commission sought to ensure the widest availability of the telecast for sports fans outside the zone of protection.<sup>10</sup>

The record in this proceeding shows, however, that marketplace changes in the last four decades have rendered the sports blackout rules obsolete. Television revenues have replaced gate receipts as the most significant source of revenue, at least for NFL clubs, and the record indicates that the sports blackout rules have little relevance for sports other than professional football because the distribution rights for most of the games in other sports are sold by individual teams, rather than the leagues.<sup>11</sup> Additionally, the sports blackout rules are unnecessary because sports leagues can pursue local blackout protection through private

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<sup>9</sup> See *Final Plan* at 7.

<sup>10</sup> See *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*, Report and Order, 54 FCC 2d 561, ¶ 55 (1975).

<sup>11</sup> See *NPRM* at ¶ 29.

contractual negotiations.<sup>12</sup>

Given these marketplace developments, several public interest groups have jointly petitioned the Commission to eliminate the sports blackout rules.<sup>13</sup> The petitioners assert that the Commission should not support anti-consumer blackout policies of professional sports leagues when soaring ticket prices and high unemployment rates make it difficult for many consumers to afford attending local sports events.<sup>14</sup> The petitioners contend that repeal of the sports blackout rules would force sports leagues to confront the obsolescence of their blackout policies, potentially leading them to reduce blackouts voluntarily.<sup>15</sup>

Numerous parties have echoed these sentiments, urging the Commission to eliminate the sports blackout rules to benefit the public interest. Economists,<sup>16</sup> members of Congress,<sup>17</sup> and thousands of individual consumers filed comments in support of the petition. These comments indicate that the sports blackout rules do not encourage consumers to purchase tickets to the games because many fans simply cannot afford admission to sporting events due to high ticket prices, the economy, or reduced income following retirement.<sup>18</sup> Some of these consumers are

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<sup>12</sup> *See id.* at ¶¶ 29, 32-33.

<sup>13</sup> *See Sports Fan Coalition, Inc., et al.,* Petition for Rulemaking, MB Docket No. 12-3 (filed Nov. 11, 2011).

<sup>14</sup> *Id.* at 4-6.

<sup>15</sup> *Id.* at 3.

<sup>16</sup> *See Comments of the Sports Economists on the FCC's Sports Blackout Rules*, MB Docket No. 12-3 (filed Feb. 13, 2012).

<sup>17</sup> *See, e.g.,* Letter from Senators Richard Blumenthal, Sherrod Brown, Tom Harkin, Debbie Stabenow, and Frank Lautenberg to Marlene Dortch, FCC Secretary, MB Docket No. 12-3 (filed Feb. 13, 2012); Letter from Congressman Brian Higgins to Julius Genachowski, FCC Chairman, MB Docket No. 12-3 (filed Sept. 5, 2013). *See also* Letter from Senators Richard Blumenthal and John McCain to Acting Chairwoman Mignon Clyburn, Federal Communications Commission, MB Docket No. 12-3 (filed June 19, 2013).

<sup>18</sup> *See, e.g.,* Comments of Paul Kane, Comments of Michael Campbell, and Comments of Paul Norconk, MB Docket No. 12-3. *See also* Comments of John Hass, Comments of Debra Posey,

disabled or elderly sports fans that are physically unable to attend the game in person and must rely on television to watch their favorite teams.<sup>19</sup> Others pay a substantial premium to watch their favorite NFL team on DirecTV's NFL Sunday ticket, but nevertheless lose access to some games due to a blackout even though they may live 150 miles or more from the stadium.<sup>20</sup> All of these concerns indicate that the sports blackout rules are "a significant source of frustration for consumers,"<sup>21</sup> and that all enforcement of the rules "does is antagonize fans who already subsidize the team and stadium"<sup>22</sup> and "drive fans away from their beloved sport."<sup>23</sup>

Thus, it is clear based on the record in this proceeding that the sports blackout rules are unnecessary based on changes in market structure, and that, as thousands of stakeholders affected by the rules have advocated, there would be greater net benefits to the public if these regulations were removed from the books. Accordingly, the Commission should eliminate its sports blackout rules as proposed in the *NPRM*.

Moreover, such relief should be applied to both cable operators and to other MVPDs that are impacted by the rules. As the Commission pointed out, Congress did not specifically direct

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Comments of Larry D. Cover, Comments of Melvin Dalrymple, Comments of Vanessa Hernandez, and Comments of Mary Cross, MB Docket No. 12-3.

<sup>19</sup> *See, e.g.*, Comments of Dora Lindemuth, Comments of Jane O'Boyle, Comments of Kevin Hanna, Comments of Jane Beaudet, Comments of Richard Cunningham, Comments of Ron Williamson, Comments of Kenneth B. Agbayani, Comments of Karen Monett, and Comments of Leo Pagliei, MB Docket No. 12-3.

<sup>20</sup> *See, e.g.*, Comments of Tim Rose, Comments of Daniel Smith, Comments of Robert McDermott, Comments of David Coffaro, Comments of David Rea, Comments of Jon Witt, Comments of Michael Myers, Comments of Edward Smith, and Comments of Michael E. Olin, MB Docket No. 12-3.

<sup>21</sup> *NPRM* at ¶ 34.

<sup>22</sup> Comments of Michael Everett, MB Docket No. 12-3, at 1. *See also* Comments of Roger Gordon, Comments of Patrick Moran, Comments of Terry Hatcher, Comments of Kimberly Burke, Comments of Robert Johnson, Comments of Kelly Madruga, Comments of David J. Reynoso, and Comments of Daryl Masamitsu, MB Docket No. 12-3.

<sup>23</sup> Comments of Corinne McDaniels, MB Docket No. 12-3, at 1.

the Commission to adopt the sports blackout rules.<sup>24</sup> However, Congress did later direct the Commission to extend the sports blackout rules it had adopted to DBS and open video system providers to establish regulatory parity between cable operators and other MVPDs. Thus, when the Commission repeals its sports blackout rules, it should provide the same relief to all MVPDs to avoid creating undue disparities among such entities.

### **CONCLUSION**

For all of the foregoing reasons, the Commission should move forward with its proposal to eliminate the outdated and obsolete sports blackout rules, extending such relief to all MVPDs.

Respectfully submitted,

By: /s/ Genevieve Morelli

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<sup>24</sup> *NPRM* at ¶ 15.