

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

In the Matter of)
)
Sports Blackout Rules) MB Docket No. 12-3
)

NOTICE OF PROPOSED RULEMAKING

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I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (“NPRM”), we propose to eliminate the Commission’s sports blackout rules, which prohibit certain multichannel video programming distributors (“MVPDs”) from retransmitting, within a protected local blackout zone, the signal of a distant broadcast station carrying a live sporting event if the event is not available live on a local television broadcast

station.¹ The sports blackout rules were originally adopted nearly 40 years ago when game ticket sales were the main source of revenue for sports leagues.² These 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.³ The rationale underpinning the rules was to ensure to the greatest extent possible the continued availability of sports telecasts to the public.⁴ Changes in the sports industry in the last four decades have called into question whether the sports blackout rules remain necessary to ensure the overall availability of sports programming to the general public. In this proceeding, we will determine whether the sports blackout rules have become outdated due to marketplace changes since their adoption, and whether modification or elimination of those rules is appropriate.⁵ We recognize that elimination of our sports blackout rules alone might not end sports blackouts, but it would leave sports carriage issues to private solutions negotiated by the interested parties in light of current market conditions and eliminate unnecessary regulation.

II. BACKGROUND

A. History of the Sports Blackout Rules

2. Prior to 1953, National Football League ("NFL") bylaws prohibited member teams from, among other things, (i) telecasting their games into the home territory of another team that was playing at home, and (ii) telecasting their games into the home territory of another team that was playing away from home and was telecasting its game into its home territory.⁶ In 1953, a federal court held that the NFL's prohibition on the telecast of outside games into the home territory of a team that was playing at home was a reasonable method of protecting the home team's gate receipts and was not illegal under the antitrust laws.⁷ The court found, however, that restricting the telecast of outside games into the home

¹ See 47 C.F.R. §§ 76.111 (cable operators), 76.127 (satellite providers), 76.128 (application of sports blackout rules), 76.1506(m) (open video systems).

² 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 265, 274, ¶ 31 (1975) ("*Cable Sports Blackout Order*"), *recon. granted in part, denied in part*, 56 FCC 2d 561 (1975). The sports blackout rules were initially applied to cable systems and later extended to open video systems ("OVS") and satellite systems. See *Implementation of Section 302 of the Telecommunications Act of 1996*, Second Report and Order, 11 FCC Rcd 18223, 18226-7, ¶ 1 (1996) ("*OVS Second Report and Order*"), *recon. granted in part, denied in part*, Third Report and Order and Second Order on Reconsideration, 11 FCC Rcd 20227 (1996); *Implementation of the Satellite Home Viewer Improvement Act of 1999: Application of Network Non-Duplication, Syndicated Exclusivity, and Sports Blackout Rules to Satellite Retransmissions of Broadcast Signals*, Report and Order, 15 FCC Rcd 21688, 21689, ¶ 1 (2000) ("*Satellite Exclusivity Order*"), *recon. granted in part, denied in part*, Order on Reconsideration, 17 FCC Rcd 27875 (2002).

³ See *Cable Sports Blackout Order*, 54 FCC 2d at 282, ¶ 57.

⁴ See *id.*

⁵ This *NPRM* promotes the goals of Executive Order 13579, which states that "[t]o facilitate the periodic review of existing significant regulations, independent regulatory agencies should consider how best to promote 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." See Exec. Order No. 13,579, § 2, 76 Fed. Reg. 41,587 (July 11, 2011); *Final Plan for Retrospective Analysis of Existing Rules*, 2012 WL 1851335 (May 18, 2012).

⁶ See *U.S. v. National Football League et al.*, 116 F.Supp. 319, 321 (E.D. Pa., 1953) ("*U.S. v. NFL I*"). "Home territory" is defined in the NFL's bylaws as "the city in which [a] club is located and for which it holds a franchise and plays its home games and includes the surrounding territory to the extent of 75 miles in every direction from the exterior corporate limits of such city." See Constitution and Bylaws of the National Football League (Eff. Feb. 1, 1970, 2006 Rev.), at http://static.nfl.com/static/content/public/static/html/careers/pdf/co_.pdf.

⁷ *U.S. v. NFL I*, 116 F.Supp. at 326.

territory of a team not playing at home was an unreasonable restraint on trade because, when the home team was playing away, there was no gate to protect.⁸

3. In 1961, the NFL entered into an agreement with the CBS television network under which the NFL's member teams pooled the television rights to their games and authorized the league to sell the rights to the network as a package, with the revenue from the league sales to be distributed equally among the member teams.⁹ Under this agreement, CBS was permitted to determine which games would be televised and where the games would be televised.¹⁰ The NFL then petitioned the court for a ruling on whether the terms of its contract with CBS violated the court's 1953 final judgment.¹¹ The court concluded that the provision giving CBS the power to determine which games would be televised and where was contrary to the final judgment and that execution and performance of the contract was therefore prohibited.¹² This ruling did not, however, apply to a similar contract between the newly formed American Football League ("AFL") and the ABC television network, because the AFL was not a party to the court's 1953 final judgment.¹³ Concerned that the court's ruling placed it at a disadvantage to the AFL, the NFL petitioned Congress for relief, arguing that packaged network contracts were desirable because they allowed the member teams to negotiate for the sale of television rights with a single voice and equalized revenue among the member teams.¹⁴

4. Congress responded to the NFL's plea for relief with its passage of the Sports Broadcasting Act of 1961.¹⁵ The Sports Broadcasting Act exempts from the antitrust laws joint agreements among individual teams engaged in professional football, baseball, basketball, or hockey that permit the leagues to pool the individual teams' television rights and sell those rights as a package.¹⁶ This statute also expressly permits these four professional sports leagues to black out television broadcasts of home games within the home territory of a member team.¹⁷ At the time the Sports Broadcasting Act was

⁸ *Id.* at 326-7. The court entered a final judgment in this case on December 28, 1953. See *U.S. v. National Football League et al.*, 196 F.Supp. 445, 447 (E.D. Pa. 1961) ("*U.S. v. NFL II*").

⁹ See *id.* at 445-46.

¹⁰ See *id.* at 447.

¹¹ See *id.* at 445.

¹² See *id.* at 447.

¹³ 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*, Notice of Proposed Rulemaking, 36 FCC 2d 641, 642, 6 (1972) ("*Sports Programs NPRM*"); see also H.R. REP. NO. 87-1178, at 2-3 (1961); S. REP. NO. 87-1107, at 2-3 (1961).

¹⁴ See *Sports Programs NPRM*, 36 FCC 2d at 642, ¶ 6; see also H.R. REP. NO. 87-1178, at 2-3; S. REP. NO. 87-1107, at 2-3.

¹⁵ P.L. 87-331, §1, 75 Stat. 732 (1961), codified at 15 U.S.C. §§ 1291-1295.

¹⁶ See 15 U.S.C. § 1291 ("The antitrust laws ... shall not apply to any joint agreement by or among persons engaging in or conducting the organized professional team sports of football, baseball, basketball, or hockey, by which any league of clubs participating in professional football, baseball, basketball, or hockey contests sells or otherwise transfers all or any part of the rights of such league's member clubs in the sponsored telecasting of the games of football, baseball, basketball, or hockey, as the case may be, engaged in or conducted by such clubs.").

¹⁷ See *id.* § 1292 ("Section 1291 of this title shall not apply to any joint agreement described in the first sentence in such section which prohibits any person to whom such rights are sold or transferred from televising any games within any area, except within the home territory of a member club of the league on a day when such club is playing a game at home."). See also *Cable Sports Blackout Order*, 54 FCC 2d at 267, ¶ 9 (noting that § 1292 "stipulates that the anti-trust exemption afforded by [§ 1291] shall not apply when the resulting package contracts provide for television blackouts other than in the 'home territory of a member club of the league on a day when such club is playing a game at home.'").

enacted, television blackouts were believed to be necessary to protect gate receipts, and the packaging of individual teams' television rights was thought to be necessary to enhance the financial stability of the leagues by assuring equal distribution of revenues among all teams.¹⁸ The NFL subsequently instituted a practice of blacking out the television broadcast of all home games of its member teams in their home territory, irrespective of whether the games were sold out.¹⁹

5. In August 1971, the Commission sent a letter to Congress seeking guidance on the Commission's proposed regulatory scheme for the then-nascent cable television industry, which included several proposals relating to sports programming.²⁰ The Commission noted the exemptions from the antitrust laws granted to professional sports leagues under the Sports Broadcasting Act and stated that "cable systems should not be permitted to circumvent the purpose of th[is] law by importing the signal of a station carrying the home game of a professional team if that team has elected to black out the game in its home territory."²¹ The Commission indicated that it would follow the "spirit and letter" of the Sports Broadcasting Act "since it represents Congressional policy in this important area" and stated that it intended to initiate a rulemaking proceeding on this issue in the near future.²² The Commission commenced a rulemaking proceeding proposing a sports blackout rule for cable television systems in February 1972.²³

6. In 1973, during the pendency of the Commission's rulemaking proceeding, Congress enacted Public Law 93-107 in response to complaints from dissatisfied football fans who were unable to view the sold out home games of their local teams on the public airwaves due to the NFL's blackout policy.²⁴ Public Law 93-107 added new Section 331 to the Communications Act of 1934, as amended ("Communications Act"), which prohibited professional sports leagues from blacking out the television broadcast of a home game in a team's home territory if the game was televised elsewhere pursuant to a league television contract and the game sold out 72 hours in advance of game time.²⁵ Public Law 93-107 was intended as a limited experiment to allow all affected parties to assess the impact of the statute and expired by its own terms effective December 31, 1975.²⁶ Although the statute was not renewed, the NFL subsequently continued to follow the practice of blacking out the television broadcast of home games in a team's home territory only if the game was not sold out 72 hours in advance of game time.²⁷

¹⁸ See H.R. REP. NO. 87-1178, at 2-3.

¹⁹ See S. REP. NO. 93-347, at 2 (1973); H.R. REP. NO. 93-483, at 6-7 (1973).

²⁰ See *Commission's Proposals for Regulation of Cable Television*, Letter, 31 FCC 2d 115, 124-25 (1971) ("1971 Letter").

²¹ See *id.*, 31 FCC 2d at 124; see also *supra* n.17. While the NFL's practice in 1971 was to black out all home games, the other major professional sports leagues televised the majority of their home games at that time. See H.R. REP. NO. 93-483, at 5, 7.

²² See *1971 Letter*, 31 FCC 2d at 124.

²³ See *Sports Programs NPRM*, 36 FCC 2d at 643, ¶ 9.

²⁴ P.L. 93-107, 87 Stat. 350 (1973). Although Public Law 93-107 applied to all four major professional sports leagues, the statute was enacted primarily in response to the blackout practices of the NFL. See S. REP. NO. 93-347, at 1-3; H.R. REP. NO. 93-483, at 6-7. At that time, MLB, the NBA, and the NHL contracted with the television networks on a pooled basis for only a limited number of games. The majority of these leagues' games were televised pursuant to contracts negotiated between individual clubs and local television licensees. See H.R. REP. NO. 93-483, at 5, 7.

²⁵ 47 U.S.C. § 331 (Dec. 31, 1975). See H.R. REP. NO. 93-483, at 2.

²⁶ See P.L. 93-107, § 2; see also S. REP. NO. 93-347, at 3.

²⁷ See *Single Notice Provision of Sports Program Deletion Rule Affirmed*, Public Notice, 61 FCC 2d 455, 455 (1976) ("[I]n the case of televised professional football games, the Commissioner of the National Football League has agreed to carry out the provisions of now-expired Public Law 93-107, 47 U.S.C. 331, by allowing to be televised in

(continued....)

7. In the meantime, the Commission adopted the cable sports blackout rule in 1975 to address concerns that cable systems could frustrate sports leagues' blackout policies by importing the distant signal of a television station carrying the home game of a sports team that has elected to black out the game in its home territory.²⁸ Specifically, the Commission found that

[g]ate receipts are the primary source of revenue for sports clubs, and teams have a reasonable interest in protecting their home gate receipts from the potentially harmful financial effects of invading telecasts of their games from distant television stations. If cable television carriage of the same game that is being played locally is allowed to take place, the local team's need to protect its gate receipts might require that it prohibit the telecasting of its games on [distant] television stations which might be carried on local cable systems. If this were to result, the overall availability of sports telecasts would be significantly reduced.²⁹

The Commission emphasized that its concern was not in ensuring the profitability of organized sports, but rather in ensuring the overall availability of sports telecasts to the general public, which it found was "of vital importance to the larger and more effective use of the airwaves."³⁰ The cable sports blackout rule adopted by the Commission is designed to allow the holder of the exclusive distribution rights to the sports event (*i.e.*, a sports team, league, promoter, or other agent, rather than a broadcaster) to control, through contractual agreements, the display of that event on local cable systems.³¹ Under this rule, the rights holder may demand that a cable system located within the specified zone of protection of a television broadcast station licensed to a community in which a sports event is taking place black out the distant importation of the sports event if the event is not being carried live by a television broadcast station in that community.³² The zone of protection afforded by the cable sports blackout rule is generally 35 miles surrounding the reference point of the broadcast station's community of license in which the live sporting event is taking place.³³ The cable sports blackout rule applies to all sports telecasts in which the event is not exhibited on a local television station, including telecasts of high school, college, and professional sports, and individual as well as team sports.³⁴

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a team's home market games which are sold out 72 hours in advance of starting time."); *see also* NFL Comments at 3 ("[T]he NFL has a local blackout policy if the game is not sold out 72 hours in advance."); Sports Economists Comments at 3; NAB Comments at 4.

²⁸ *See Cable Sports Blackout Order*, 54 FCC 2d at 282, ¶ 57. The sports blackout rule for cable was originally codified in Section 76.67 of the Commission's rules. *See id.* at 285, Appendix C. In 2000, the cable sports blackout rule was renamed, slightly revised, and renumbered as Section 76.111 of the Commission's rules. *See Satellite Exclusivity Order*, 15 FCC Rcd at 21741-42, Appendix B. The full text of Section 76.111, 47 C.F.R. § 76.111, is provided in Appendix B of this *NPRM*.

²⁹ *See Cable Sports Blackout Order*, 54 FCC 2d at 281, ¶ 55.

³⁰ *See id.* at 281, ¶ 57.

³¹ *See id.* at 285, ¶ 62; *see also* 47 C.F.R. § 76.111(a).

³² *See* 47 C.F.R. §§ 76.111(a), 76.128. The holder of the rights to the sports event must follow certain notification procedures in order to trigger deletion of the programming from affected cable systems. *See id.* § 76.111(b), (c).

³³ *See* 47 C.F.R. § 76.5(e). The reference points are listed in Section 76.53 of the Commission's rules. *See id.* § 76.53. If there is no television station licensed to the community in which the sports event is taking place, the applicable zone of protection is that of the television station licensed to the community with which the sports event or team is identified, or if the event or local team is not identified with any particular community, the nearest community to which a television station is licensed. *See id.* § 76.111(a).

³⁴ *See Cable Sports Blackout Order*, 54 FCC 2d at 282, ¶ 58. The Commission has exempted cable systems with fewer than 1,000 subscribers from the sports blackout rule, concluding that it would be burdensome on these systems to purchase the equipment needed to black out sports programming. *See Amendment of Part 76 of the Commission's Rules and Regulations with Respect to the Definition of a Cable Television System and the Creation* (continued....)

8. The Telecommunications Act of 1996 (the “1996 Act”)³⁵ added a new Section 653 to the Communications Act, which established a new framework for entry into the video programming distribution market, the open video system.³⁶ Congress’s intent in establishing the open video system framework was “to encourage telephone companies to enter the video programming distribution market and to deploy open video systems in order to ‘introduce vigorous competition in entertainment and information markets’ by providing a competitive alternative to the incumbent cable operator.”³⁷ As an incentive for telephone company entry into the video programming distribution market, Section 653 provides for reduced regulatory burdens for open video systems subject to the systems’ compliance with certain non-discrimination and other requirements set forth in Section 653(b)(1).³⁸ Section 653(b)(1)(D) directed the Commission to extend to the distribution of video programming over open video systems the Commission’s rules on sports blackouts, network nonduplication, and syndicated exclusivity.³⁹ The Commission amended its rules in 1996 to directly apply the existing cable sports blackout rule to open video systems.⁴⁰

9. In November 1999, Congress enacted the Satellite Home Viewer Improvement Act of 1999 (“SHVIA”), which provides statutory copyright licenses for satellite carriers to provide additional local and national broadcast programming to subscribers.⁴¹ In enacting SHVIA, Congress sought to place satellite carriers on an equal footing with cable operators with respect to the availability of broadcast programming.⁴² Section 1008 of SHVIA added a new Section 339 to the Communications Act.⁴³ Section 339(b) directed the Commission to apply the cable network nonduplication, syndicated exclusivity, and sports blackout rules to satellite carriers’ retransmission of nationally distributed superstations and, to the extent technically feasible and not economically prohibitive, to extend the cable sports blackout rule to satellite carriers’ retransmission of network stations to subscribers.⁴⁴

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of Classes of Cable Systems, Second Report and Order, 68 FCC 2d 18, 33-34, ¶ 32 (1978); *see also* 47 C.F.R. § 76.111(f).

³⁵ Telecommunications Act of 1996, Pub. L. No 104-104, 110 Stat. 56 (1996).

³⁶ 47 U.S.C. § 573.

³⁷ *OVS Second Report and Order*, 11 FCC Rcd at 18227, ¶ 2.

³⁸ *See id.*; *see also* 47 U.S.C. § 573(c).

³⁹ 47 U.S.C. § 573(b)(1)(D).

⁴⁰ *See OVS Second Report and Order* 11 FCC Rcd at 18326-27, ¶¶ 201-4. The full text of the sports blackout rule for OVS, which is codified at 47 C.F.R. § 76.1506(m), is provided in Appendix B of this NPRM. We note that Section 76.1506(m) references Section 76.67 of the Commission’s rules, which has been renumbered as Section 76.111. *See supra* n.28. If the sports blackout rule for OVS is retained, we propose to update Section 76.1506(m) to cite the appropriate rule section, Section 76.111.

⁴¹ SHVIA was enacted as Title I of the Intellectual Property and Communications Omnibus Reform Act of 1999 (relating to copyright licensing and carriage of broadcast signals by satellite carriers, codified in scattered sections of 17 and 47 U.S.C.), P.L. No. 106-113, 113 Stat. 1501, Appendix I (1999).

⁴² *See Satellite Exclusivity Order*, 15 FCC Rcd at 21690, ¶¶ 4-5; *see also* Joint Explanatory Statement of the Committee of Conference on H.R. 1554, 106th Cong. (“Joint Explanatory Statement”), 145 Cong. Rec. H11793, H11796 (daily ed. Nov. 9, 1999) (stating that the network nonduplication, syndicated exclusivity, and sports blackout rules for satellite carriers “should be as similar as possible to that applicable to cable services”).

⁴³ *See* 47 U.S.C. § 339 (as enacted by § 1008 of SHVIA).

⁴⁴ *Id.* § 339(b).

10. The Commission adopted a sports blackout rule for satellite carriers in November 2000.⁴⁵ This rule provides that, on the request of the holder of the rights to a sports event, a satellite carrier may not retransmit a nationally distributed superstation⁴⁶ or a network station⁴⁷ carrying the live television broadcast of the sports event to subscribers if the event is not being carried live by a local television broadcast station.⁴⁸ This rule applies within the same 35-mile zone of protection that applies to cable systems; that is, 35 miles surrounding the reference point of the broadcast station's community of license in which the live sporting event is taking place.⁴⁹

11. The Commission last examined the sports blackout rules more than seven years ago, in a 2005 report to Congress required by the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA").⁵⁰ SHVERA directed the Commission to complete an inquiry and submit a report to Congress "regarding the impact on competition in the multichannel video programming distribution market of the current retransmission consent, network non-duplication, syndicated exclusivity, and sports blackout rules, including the impact of those rules on the ability of rural cable operators to compete with direct broadcast satellite ('DBS') industry in the provision of digital broadcast television signals to consumers."⁵¹ SHVERA also directed the Commission to "include such recommendations for changes in any statutory provisions relating to such rules as the Commission deems appropriate."⁵² The Commission concluded in its report that the sports blackout rules do not affect competition among MVPDs, that commenters failed to advance any link between the blackout rules and competition among MVPDs, and that no commenter pressed the case for repeal or modification of the sports blackout rules.⁵³ The

⁴⁵ See *Satellite Exclusivity Order*, 15 FCC Rcd at 21689, ¶ 1. The full text of the satellite sports blackout rule, which is codified at 47 C.F.R. § 76.127, is provided in Appendix B of the *NPRM*.

⁴⁶ A "nationally distributed superstation" is defined as "a television broadcast station, licensed by the Commission, that: (1) [i]s not owned or operated by or affiliated with a television network that, as of January 1, 1995, offered interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more states; (2) [o]n May 1, 1991, was retransmitted by a satellite carrier and was not a network station at that time; and (3) [w]as, as of July 1, 1998, retransmitted by a satellite carrier under the statutory license of section 119 of title 17, United States Code." 47 U.S.C. § 339(d)(2); 47 C.F.R. § 76.120(b). The television broadcast stations that meet this definition are limited to KTLA-TV (Los Angeles), WPIX-TV (New York), KWGN-TV (Denver), WSBK-TV (Boston), WWOR-TV (New York) and WGN-TV (Chicago). See *Satellite Exclusivity Order*, 15 FCC Rcd at 21692-93, ¶¶ 9-10.

⁴⁷ A "network station" is a television broadcast station that is owned or operated by, or affiliated with, a television network as defined in 17 U.S.C. § 119(d). See 47 U.S.C. § 339(d)(3); 47 C.F.R. § 76.120(d).

⁴⁸ See *Satellite Exclusivity Order*, 15 FCC Rcd at 21725-26, ¶ 74; see also 47 C.F.R. § 76.127(a). Although SHVIA provides that the sports blackout rule should be applied to satellite carriers' retransmission of network stations "only to the extent technically feasible and not economically prohibitive," the Commission concluded that satellite carriers failed to meet the heavy burden of demonstrating that the sports blackout rule should not be imposed on satellite retransmission of network stations. See *Satellite Exclusivity Order*, 15 FCC Rcd at 21721, ¶ 64.

⁴⁹ See *Satellite Exclusivity Order*, 15 FCC Rcd at 21725, ¶ 74; see also 47 C.F.R. § 76.120(e)(3). In order to trigger deletion of a sports event from a satellite carrier, the holder of the rights to the sports event must comply with certain notification procedures, including providing the satellite carrier a list of the U.S. postal zip codes that encompass the applicable zone of protection. See 47 C.F.R. § 76.127(b), (c). A satellite carrier is not required to delete a sports event if it has fewer than 1,000 subscribers within the relevant zone of protection who subscribe to the nationally distributed superstation or network station carrying the sports event for which deletion is requested. See *id.* § 76.127(e).

⁵⁰ See *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 (Sept. 5, 2005) ("SHVERA Section 208 Report to Congress"); see also P.L. No. 108-447, 118 Stat. 2809 (2004).

⁵¹ P.L. No. 108-447, § 208.

⁵² *Id.*

Commission therefore declined to recommend any regulatory or statutory revisions to modify the protections afforded to the holders of sports programming rights.⁵⁴

12. Today, sports leagues' blackout policies determine which games are blacked out locally. These policies are given effect primarily through contractual arrangements negotiated between the leagues or individual teams that hold the rights to the games and the entities to which they grant distribution rights, including television networks, local television broadcast stations, Regional Sports Networks ("RSNs"), and MVPDs.⁵⁵ The Commission's rules, described above, supplement these contractual relationships by requiring MVPDs to black out games that are required by the sports leagues or individual teams to be blacked out on local television stations.

B. Petition for Rulemaking

13. In November 2011, the Sports Fan Coalition, Inc., National Consumers League, Public Knowledge, League of Fans, and Media Access Project (collectively, "Petitioners" or "SFC") filed a joint Petition for Rulemaking urging the Commission to eliminate the sports blackout rules.⁵⁶ The Petitioners assert that, at a time when ticket prices for sports events are at historic highs and high unemployment rates persist, making it difficult for many consumers to afford attending local sports events, the Commission should not support the "anti-consumer" blackout policies of professional sports leagues.⁵⁷ The Petitioners also argue that the sports leagues' blackout policies are no longer needed to protect gate receipts and therefore should not be facilitated by the Commission's sports blackout rules.⁵⁸ The Petitioners maintain that, "without a regulatory subsidy from the federal government in the form of the [sports blackout rules], sports leagues would be forced to confront the obsolescence of their blackout policies and could voluntarily curtail blackouts."⁵⁹ On January 12, 2012, the Media Bureau issued a Public Notice seeking comment on the Petition.⁶⁰ Comments in support of the petition were filed by SFC, a group of nine sports economists,⁶¹ several members of Congress,⁶² and thousands of individual

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⁵³ See *SHVERA Section 208 Report to Congress*, 2005 WL 2206070, at *18.

⁵⁴ See *id.*

⁵⁵ See NAB Comments at 1, 3-6; Sports Economists Comments at 2-5; Network Affiliates Reply Comments at 1.

⁵⁶ See Sports Fan Coalition, Inc. *et al.*, Petition for Rulemaking, MB Docket No. 12-3, at 3 (Nov. 11, 2011) ("Petition").

⁵⁷ See *id.* at 4-6.

⁵⁸ See *id.* at 8-11.

⁵⁹ *Id.* at 3.

⁶⁰ See *Commission Seeks Comment on Petition for Rulemaking Seeking Elimination of the Sports Blackout Rule*, Public Notice, 27 FCC Rcd 260 (MB 2012).

⁶¹ The nine sports economists who jointly filed comments on the petition for rulemaking are: Robert Baade of Forest College; Dennis Coates of the University of Maryland Baltimore County; Rodney Fort of the University of Michigan; Ira Horowitz of the University of Florida; Brad Humphreys of the University of Alberta; Roger G. Noll of Stanford University; Allen Sanderson of the University of Chicago; John J. Siegfried of Vanderbilt University; and Andrew Zimbalist of Smith College (collectively, "Sports Economists"). They state that they are academic economists who have published research on the economics of major league team sports, that they prepared their comments independently, and that they have received no payment or assistance of any kind from any party for preparing their comments. See Sports Economists Comments at 1.

⁶² Joint comments were submitted by Senators Richard Blumenthal, Sherrod Brown, Tom Harkin, Debbie Stabenow, and Frank Lautenberg (deceased) ("Senator Blumenthal *et al.* Comments"). Congressman Brian Higgins also filed comments ("Congressman Higgins Comments"). In addition, Senators Richard Blumenthal and John McCain submitted a letter urging the Commission to issue a Notice of Proposed Rulemaking on the sports blackout rules. See Letter from Senator Richard Blumenthal and Senator John McCain to Acting Chairwoman Mignon Clyburn, Federal Communications Commission (June 19, 2013) ("Blumenthal/McCain June 19, 2013 *Ex Parte* Letter"),

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consumers. The NFL, the Office of the Commissioner of Baseball (“Baseball Commissioner”), the National Association of Broadcasters (“NAB”), and a group of network television affiliates (“Network Affiliates”) filed comments opposing the Petition.

III. DISCUSSION

14. We propose to eliminate the sports blackout rules. The sports blackout rules were first adopted nearly four decades ago to ensure that the potential loss of gate receipts resulting from cable system importation of distant stations did not lead sports clubs to refuse to sell their rights to sports events to distant stations, which would reduce the overall availability of sports programming to the public.⁶³ The rules were extended to open video systems and then to satellite carriers to provide parity between cable and newer video distributors.⁶⁴ The sports industry has changed dramatically in the last 40 years, however, and the Petitioners argue that the economic rationale underlying the sports blackout rules may no longer be valid. Below we seek comment on whether we have authority to repeal the sports blackout rules. Next, we examine whether the economic considerations that led to adoption of the sports blackout rules continue to justify our intervention in this area. Finally, we propose to eliminate the sports blackout rules and seek comment on the potential benefits and harms of that proposed action on interested parties, including sports leagues, broadcasters, and consumers.

A. Legal Authority

15. We seek comment on whether we have the authority to repeal the sports blackout rules. As discussed above, Congress did not explicitly mandate that the Commission adopt the cable sports blackout rule.⁶⁵ Rather, the Commission adopted the cable sports blackout rule as a regulatory measure premised on the policy established by Congress in the Sports Broadcasting Act, which exempts from the antitrust laws joint agreements among individual teams engaged in professional football, baseball, basketball, or hockey that permit the leagues to pool the individual teams’ television rights and sell those rights as a package and expressly permits these four professional sports leagues to black out television broadcasts of home games within the home territory of a member team.⁶⁶ Section 653(b)(1)(D) of the Act, as added by the 1996 Act, directed the Commission to extend to open video systems “the Commission’s regulations concerning sports exclusivity (47 C.F.R. 76.67).”⁶⁷ Similarly, Section 339(b) of the Communications Act, as added by SHVIA in 1999, directed the Commission to “apply ... sports blackout protection (47 CFR 76.67) to the retransmission of the signals of nationally distributed superstations by satellite carriers” and, “to the extent technically feasible and not economically prohibitive, apply sports blackout protection (47 CFR 76.67) to the retransmission of the signals of network stations by satellite carriers.”⁶⁸ Reflecting the language used in these statutory provisions, the legislative history of Section 339(b) states that Congress’s intent was to place satellite carriers on an equal footing with cable operators with respect to the availability of television programming.⁶⁹ Petitioners

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available at <http://www.blumenthal.senate.gov/newsroom/press/release/blumenthal-calls-on-fcc-to-end-sports-blackout-rule>.

⁶³ See *supra* ¶ 7.

⁶⁴ See *supra* ¶¶ 8-10.

⁶⁵ See *supra* ¶¶ 5, 7.

⁶⁶ See *Cable Sports Blackout Order*, 54 FCC 2d at 278-81, ¶¶ 43-54; see also *supra* ¶ 5.

⁶⁷ See *supra* ¶ 8; see also *supra* n.28.

⁶⁸ See 47 U.S.C. § 339(b).

⁶⁹ See *supra* n.42; see also H.R. Conf. Rep. No. 106-464, at 103 (1999) (directing that the sports blackout rules on DBS “are to be imposed ‘to the extent technically feasible and not economically prohibitive’ with respect to affected parties. The burden of showing that conforming to rules similar to cable would be ‘economically prohibitive’ is a heavy one. It would entail a very serious economic threat to the health of the carrier. Without that showing, the

(continued....)

argue that the Commission has the authority to repeal the sports blackout rules for both cable and DBS because Congress never directed the Commission to issue the sports blackout rules in the first instance and only directed the Commission to establish parity between the cable and DBS regimes.⁷⁰ Senators Blumenthal and McCain likewise assert that “[i]t is important to note that Congress never instructed the Commission to promulgate the Sports Blackout Rule in the first place. The Commission therefore possesses ample authority to amend the Sports Blackout Rule *sua sponte*, without any action by Congress.”⁷¹ Several commenters opposing elimination of the sports blackout rules assert that Congress mandated the sports blackout rule for DBS.⁷² These commenters do not, however, expressly argue that the Commission does not have authority to eliminate the sports blackout rules, either for cable or for DBS and OVS. We tentatively conclude that repeal of the cable sports blackout rule is authorized by the Communications Act, which grants the Commission general rulemaking power, including the authority to revisit its rules and modify or repeal them where it concludes such action is appropriate.⁷³ We seek comment on this tentative conclusion. We also seek comment on whether we have the authority to repeal the sports blackout rules for DBS and OVS. We observe that when Congress enacted the sports blackout provisions in Sections 339(b) and 653(b)(1)(D) of the Act, Congress directed the Commission to apply to DBS and OVS the sports blackout protection applied to cable, set forth in 47 C.F.R. § 76.67, rather than simply directing the adoption of sports blackout rules for those services.⁷⁴ The statute does not withdraw the Commission’s authority to modify its cable rule at some point in the future, nor is there any indication in the legislative history that Congress intended to withdraw this authority. Given that the DBS and OVS provisions are expressly tied to the cable sports blackout rule, does this evince an intent on the part of Congress that the Commission should accord the same regulatory treatment to DBS and OVS as cable, *i.e.*, if the Commission modifies or repeals the cable rule it should also modify or repeal the DBS and OVS rules? Would Congress’s intent to subject open video systems to reduced regulatory burdens as an incentive for their entry into the video market support an assertion of authority to eliminate the sports blackout rule for OVS if we determine that the cable sports blackout rule is no longer needed? Alternatively, are Congress’s directives to the Commission regarding the application of sports blackout protection to open video systems and to satellite carriers more appropriately interpreted to mean that the Commission does not have the authority to repeal the sports blackout rules for these types of entities, even if it does so for cable? If we determine that we do not have the authority to repeal the satellite sports blackout rule and/or the OVS sports blackout rule, would it nevertheless be appropriate to repeal the cable

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rules should be as similar as possible to that applicable to cable services”); H.R. Rep. No. 106-86(I), at 16 (1999) (“The Federal Communications Commission is directed to adopt ... sports blackout rules applicable to satellite retransmission of television signals. To the extent possible, the Commission should model its new regulations after those that currently apply to the cable industry”).

⁷⁰ See SFC Comments at 14-18; see also Letter from David R. Goodfriend, Chairman, Sports Fan Coalition, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12-3 (July 10, 2013) (“SFC July 10, 2013 *Ex Parte* Letter”), at 1-2, *citing* Blumenthal/McCain June 19, 2013 *Ex Parte* Letter. The Petitioners do not address the Commission’s authority to eliminate the sports blackout rule for open video systems.

⁷¹ Blumenthal/McCain June 19, 2013 *Ex Parte* Letter at 1.

⁷² See NFL Comments at 10 (“Indeed, in 1999 Congress explicitly required that the FCC extend the cable sports blackout rule to satellite operators in order to reinforce these goals.”); NAB Comments at 5 (“In 1999, Congress mandated a similar rule for Direct Broadcast Satellite (‘DBS’), limiting the importation of local sports telecasts by satellite providers, which the FCC adopted in 2000.”); Baseball Commissioner Comments at 3-4 (noting that in SHVIA, “Congress directed the Commission to extend the Sports Rule to satellite carriers.”).

⁷³ See 47 U.S.C. §154(i) (authorizing the agency to “perform any and all acts, make such rules and regulations, and issue such orders not inconsistent with this Act, as may be necessary in the execution of its function”); 47 U.S.C. § 303(r) (providing that the Commission may “[m]ake such rules and regulations ... not inconsistent with this law, as may be necessary to carry out the provisions of this Act....”).

⁷⁴ See 47 U.S.C. §§ 339(b), 573(b)(1)(d).

sports blackout rule? Would eliminating the sports blackout rule for cable but not for DBS and/or OVS create undue disparities or unintended consequences for any of these entities?

B. Assessing the Continued Need for Sports Blackout Rules

16. We request comment on whether the economic rationale underlying the sports blackout rules remains valid in today's marketplace. Specifically, we invite commenters to submit information, and to comment on information currently in the record, regarding (i) the extent to which sports events continue to be blacked out locally as a result of the failure of the events to sell out, (ii) the relative importance of gate receipts vis-à-vis other revenues in organized sports today, and (iii) whether local blackouts of sports events significantly affect gate receipts. We invite commenters also to submit any other information that may be relevant in assessing whether the sports blackout rules are still needed to ensure the overall availability of sports telecasts to the public. We ask commenters to assess whether this information, as updated and supplemented, supports retaining or eliminating the sports blackout rules.

1. Blackouts of Sports Events

17. We seek comment on the extent to which sports events are blacked out locally today due to the failure of the events to sell out. The record indicates that professional football continues to be the sport most affected by blackouts.⁷⁵ Under the NFL's longstanding blackout policy, the television broadcast of home games in a team's home territory has been blacked out if the game was not sold out 72 hours in advance of game time.⁷⁶ In 1974, just prior to the Commission's adoption of the cable sports blackout rule, 59 percent of regular season NFL games were blacked out due to failure of the games to sell out.⁷⁷ During the 2011 NFL season, only 16 out of 256 regular season games, or six percent of games, were blacked out.⁷⁸ These 16 blackouts occurred in just four cities: Buffalo, Cincinnati, San Diego, and Tampa Bay.⁷⁹ Thus, the percentage of NFL games that are blacked out today has dropped substantially since the sports blackout rules were adopted, and blackouts of NFL games are relatively rare.⁸⁰ Does this substantial reduction in the number of blacked-out NFL games suggest that the sports blackout rules are no longer needed? Conversely, does the relatively small number of blackouts of NFL games argue against the need to eliminate the sports blackout rules? To what extent are blackouts of NFL games averted when teams and local businesses work together to "sell" outstanding tickets, thereby allowing local coverage of games?⁸¹ Has the cable sports blackout rule had any impact on the number of NFL blackouts? How should this affect our analysis?

18. We note that in 2012, after the petition for rulemaking in this proceeding was put out for comment, the NFL modified its blackout policy to allow its member teams the option of avoiding a blackout in their local television market if the team sold at least 85 percent of game tickets at least 72

⁷⁵ See Sports Economists Comments at 5-6.

⁷⁶ See *supra* n.27.

⁷⁷ See NFL Comments at 4.

⁷⁸ See NFL Comments at 3; see also Sports Economists Comments at 5-6.

⁷⁹ See NFL Comments at 3-4 n.5; Sports Economists Comments at 13. SFC notes that, in 2011, the NFL blacked out six (75 percent) of Cincinnati's home games; five (71.4 percent) of Tampa Bay's home games; three (37.5 percent) of Buffalo's home games; and two (25 percent) of San Diego's home games. See SFC Comments at 7 & n.11.

⁸⁰ See NFL Comments at 3; Sports Economists Comments at 13.

⁸¹ See *e.g.*, Sports Economists Comments at 15 (noting that "teams can use the threat of blackouts as a strategic marketing tool. A team may know that attendance is not affected by whether a game is televised locally, but still can market the opportunity to avoid a blackout. A firm that buys the last block of tickets just before the blackout deadline can then claim credit for lifting the blackout. For example, a local restaurant bought the remaining unsold tickets to the last Buffalo Bills home game in 2010 to assure that the game would be televised.").

hours prior to the game.⁸² Specifically, under this new policy, individual teams are required to determine their own blackout threshold – anywhere from 85 percent to 100 percent – at the beginning of the season and adhere to that number throughout that season.⁸³ If ticket sales exceed the threshold set by the team, the team must share a higher percentage of the revenue from those ticket sales than usual with the visiting team.⁸⁴ We seek comment on the extent to which this new policy has impacted blackouts of NFL games. According to SFC, there were 15 NFL games blacked out affecting five NFL franchises during the 2012 season.⁸⁵ Which teams opted to take advantage of the NFL’s new blackout policy and what effect, if any, did the NFL’s relaxation of its blackout policy have on ticket sales for the home games of these teams? Does the NFL’s recent relaxation of its sports blackout policy weigh in favor of or against elimination of the Commission’s sports blackout rules?⁸⁶

19. We note that the record is largely silent on the prevalence of blackouts affecting sports other than the NFL; thus, we invite comment on the extent to which these sports events are blacked out locally today. As noted above, the sports blackout rules apply to all sports telecasts in which the event is not available live on a local television station, including telecasts of high school, college, and professional sports, and individual as well as team sports.⁸⁷ The Sports Economists assert, however, that “major professional sports leagues in the U.S. [other than the NFL] generally do not use blackout rules to prevent a game from being televised in the locality in which it is being played” because they “sell television rights to only some games through national broadcast agreements.”⁸⁸ The Sports Economists explain that

[t]he FCC’s rules currently have little relevance with respect to television rights that are sold by a team rather than the league. The FCC’s rules apply only to games in the local area where they are being played. Thus, the FCC’s blackout rules bear no relation to league policies that prevent

⁸² See Letter from Brian S. Frederick, Executive Director, Sports Fan Coalition, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12-3, at 2 (July 26, 2012) (“SFC July 26, 2012 *Ex Parte* Letter”).

⁸³ See *id.*

⁸⁴ See *id.*

⁸⁵ Specifically, the blackouts involved the Tampa Bay Buccaneers (weeks 1, 4, 6, 10, 12, and 16), the San Diego Chargers (weeks 3, 12, 13, and 15), the Buffalo Bills (weeks 13 and 17), the Cincinnati Bengals (weeks 10 and 12), and the Oakland Raiders (week 13). See <http://sportsfans.org> (last accessed Sept. 6, 2013). Although SFC’s website states that 15 NFL games were blacked out during the 2012 season, it listed only 14 blacked out games. We note that in addition to the 14 games specifically listed on SFC’s website, the Cincinnati Bengals game during week 12 was also blacked out. See Josh Kirkendall, *Cincinnati Bengals Fall “Several Thousand Tickets Short Of A Sellout” Against Oakland Raiders*, CincyJungle.com (Nov. 23, 2012), available at <http://www.cincyjungle.com/2012/11/23/3682516/cincinnati-bengals-fall-several-thousand-tickets-short-of-a-sellout>.

⁸⁶ See SFC July 26, 2012 *Ex Parte* Letter at 1 (asserting that the NFL’s relaxation of its blackout policy “acknowledges the outdated nature of existing local sports blackout practices”).

⁸⁷ See *Cable Sports Blackout Order*, 54 FCC 2d at 282, ¶ 58.

⁸⁸ Sports Economists Comments at 6-7. The Sports Economists note that in these other leagues, the distribution rights to most games are held by the home team, which then enters into reciprocal arrangements with other teams that allow each team to telecast its away games as well as its home games. Such arrangements allow teams to sell distribution rights to both home and away games to local television stations in their home market and/or to RSNs that deliver games to areas that are not part of the home territory of any team. Thus, each individual team is in control of deciding how many of its games, both home and away, will be telecast live in its local and regional markets. *Id.* at 7.

telecasts in a team's home market of a game being played elsewhere. For games that are played locally, the vast majority of teams choose to sell television rights to all or most of their games....⁸⁹

To what extent are the sports blackout rules still relevant for sports other than professional football, where individual teams, rather than the league, hold and sell the distribution rights for all or most of the games? In this regard, we seek comment on the importance of retaining the sports blackout rules to protect the viability of any nascent sports leagues that may emerge in the future.

20. Professional baseball is the only other sport for which commenters provided any information on blackouts. Commenters indicate that the number of MLB games blacked out is relatively small because individual MLB teams, rather than the league, negotiate with local broadcast television flagship stations or RSNs⁹⁰ for exclusive rights to televise most of the teams' games, both home and away games, in the teams' home territories.⁹¹ According to the Baseball Commissioner, in 2011, 151 of 162 regular season games of each MLB team, on average, were televised on the team's local broadcast television station or RSN.⁹² Therefore, the Baseball Commissioner asserts, at most eleven of 162 regular season games of each MLB team were affected by the sports blackout rules.⁹³ To the extent that more specific data are available regarding the number of home games of MLB teams blacked out pursuant to

⁸⁹ *Id.*; see also SFC Reply Comments at 6 n.6 (agreeing that the sports blackout rules have little relevance for professional sports other than the NFL).

⁹⁰ "Regional Sports Network" has been defined by the Commission as

any non-broadcast video programming service that (1) provides live or same-day distribution within a limited geographic region of sporting events of a sports team that is a member of Major League Baseball, the National Basketball Association, the National Football League, the National Hockey League, NASCAR, NCAA Division I Football, NCAA Division I Basketball, Liga de Béisbol Profesional de Puerto Rico, Baloncesto Superior Nacional de Puerto Rico, Liga Mayor de Fútbol Nacional de Puerto Rico, and the Puerto Rico Islanders of the United Soccer League's First Division, and (2) in any year, carries a minimum of either 100 hours of programming that meets the criteria of subheading 1, or 10% of the regular season games of at least one sports team that meets the criteria of subheading 1.

Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements, First Report and Order, 25 FCC Rcd 746 783-84, ¶ 53 (2010), *affirmed in part and vacated in part sub nom. Cablevision Sys. Corp. et al. v. FCC*, 649 F.3d 695 (D.C. Cir. 2011).

⁹¹ See Baseball Commissioner Comments at 6, 10-11; see also SFC Comments at 6 n.6; Sports Economists Comments at 7-8. MLB allocates the territorial television rights of MLB clubs by assigning each team to a "home territory," which is generally much larger than the 35-mile zone of protection specified in the Commission's rules. See Baseball Commissioner Comments at 5; see also Sports Economists Comments at 8; Senator Blumenthal *et al.* Comments at 2. All television markets in the U.S., even markets that are located hundreds of miles from the nearest MLB team, are part of the home territory of at least one team, and some localities are in the home territory of as many as six teams. See Sports Economists Comments at 8; see also Senator Blumenthal *et al.* Comments at 2.

⁹² See Baseball Commissioner Comments at 6.

⁹³ See *id.* The Baseball Commissioner suggests that this number (eleven of 162 regular season games of each MLB team) may overstate the extent of blackouts under the Commission's rules because some of these eleven games may have been away games not subject to the Commission's sports blackout rules or were available from other sources, such as one of the league's national rights holders. See *id.* For example, MLB sells exclusive national rights to the FOX network to show one Saturday afternoon game and to ESPN to show one Sunday evening game. See Senator Blumenthal *et al.* Comments at 2. During these exclusive Saturday afternoon and Sunday evening periods, a team may not televise a game locally anywhere, even a home game that is not being televised by the national network. Thus, since the game is not being televised locally anywhere, the game is not being "blacked out" under the Commission's rules. See Sports Economists Comments at 8.

the Commission's sports blackout rules, as opposed to MLB's blackout policies,⁹⁴ we request that commenters provide those data.⁹⁵ Specifically, for each MLB team, we seek current data on whether exclusive rights to televise most of the teams' games have been granted to local broadcast flagship stations or RSNs and the number of home games that are blacked out pursuant to the Commission's rules. Does the number of games blacked out argue in favor of or weigh against repeal of the sports blackout rules? In addition, for home games that are blacked out under our rules, we seek information as to why they are blacked out. In this regard, the Baseball Commissioner states that "[t]he vast majority of MLB games are not sold out. While there are specific instances in which MLB clubs do take account of gate attendance in making decisions about telecasting patterns (and invoking the [Commission's sports blackout rules]), MLB clubs do not routinely black out games that are not sold out."⁹⁶ Accordingly, what factors other than attendance are taken into account in determining which MLB games are blacked out locally? How many MLB games were blacked out due to failure to sell out and how many were blacked out for other reasons? If, as reported, few MLB games are blacked out due to failure to sell out, does this support the conclusion that the sports blackout rules are not needed to promote attendance at sports events?

21. We likewise request specific data detailing the extent to which any other sports events, including games of other major professional sports leagues (*e.g.*, the NBA and NHL), and any other professional, collegiate, or high school sports events, are blacked out locally. To the extent that these other sports events are blacked out, are they blacked out due to failure of the event to sell out or for some other reason?

2. Gate Receipts and Other Revenues

22. We seek comment on the relative importance of gate receipts vis-à-vis other revenues in sports today. As discussed above, when the Commission adopted the cable sports blackout rule in 1975, it found that "gate receipts were the *primary* source of revenue for sports clubs."⁹⁷ The record before us indicates, however, that the importance of gate receipts has diminished dramatically for NFL clubs in the past four decades, particularly in relation to television revenues. The Sports Economists state that in 1970

⁹⁴ Most of the consumer complaints in the record regarding blackouts of MLB games involve blackouts that result from MLB's use of expansive home territories and MLB's blackout policy, rather than the Commission's sports blackout rules. See *supra* n.91 for description of MLB's home territories. Under MLB's blackout policy, fans can generally only watch their "home" team (either home or away games) on the local station or RSN that has exclusive distribution rights in their assigned "home territory." For example, the State of Iowa, which does not have its own major league team, is assigned to the "home territories" of six MLB teams: the Chicago Cubs, Chicago White Sox, Kansas City Royals, Milwaukee Brewers, Minnesota Twins, and St. Louis Cardinals. Some or all of the games of these "home" teams may not be available to residents in certain areas of Iowa, however, because the residents' cable system or satellite carrier does not carry the local television station or RSN with exclusive distribution rights to the team's games. Even if these residents purchase a premium package such as MLB's Extra Innings (MLB's premium cable network channel) or MLB.tv (MLB's premium internet streaming service), the games of their "home" team will be blacked out on the premium service under the terms of MLB's agreement with the premium service. See Senator Blumenthal *et al.* Comments at 2; see also *SHVERA Section 208 Report to Congress* at ¶ 56; MLB Blackouts FAQ at http://mlb.mlb.com/mlb/help/faq_blackout.jsp.

⁹⁵ The Baseball Commissioner asserts that in order to obtain the protection afforded by the Commission's sports blackout rules, it "incur[s] the significant cost of identifying all of the potentially affected cable systems and games for each U.S. club and sending notices in the form and within the time frame required" by the Commission's rules. See Baseball Commissioner Comments at 5. Thus, it appears that detailed information on the number of MLB regular season games blacked out pursuant to the Commission's rules is readily available. Particularly in view of the Baseball Commissioner's strong opposition to elimination of the Commission's sports blackout rules, it would be useful to have more specific data on the number of MLB games blacked out under these rules.

⁹⁶ Baseball Commissioner Comments at 8.

⁹⁷ *Cable Sports Blackout Rules*, 54 FCC 2d at 281, ¶ 55 (emphasis added).

the estimated average revenue of an NFL team was approximately \$5 million and the estimated average operating income was less than \$1 million, whereas in 2009 the estimated average revenue of an NFL team was about \$250 million and the estimated average operating income was \$33 million.⁹⁸ The Sports Economists further state that ticket sales today account for around 20 percent of NFL revenues, while television revenues account for around 60 percent.⁹⁹ According to SFC, television revenues, which are shared equally among teams, are 80 times what they were in 1970 and now account for 50 percent of the NFL's total revenues.¹⁰⁰ SFC asserts that gate receipts, which are split 60/40 between the home team and visiting team, account for only 21.6 percent of the NFL's total revenues.¹⁰¹ These figures indicate that television revenues have replaced gate receipts as the most significant source of revenue for NFL clubs. Does this shift in the source of revenue for NFL clubs undermine the economic rationale for the sports blackout rules? We invite commenters to supplement the record with more current data on NFL revenues, including total revenues, gate receipts, and television revenues, to the extent that such data are available. If gate receipts are no longer the primary or most significant source of revenue for NFL clubs, are the sports blackout rules still necessary to promote attendance at games and to ensure the overall availability of telecasts of these sports to the public? If so, why?

23. There is scant information in the record regarding the significance of gate receipts in relation to other sources of revenue for sports other than professional football. The Baseball Commissioner states only that, "in any given year, ticket sales and television revenues account for roughly the same portion of [MLB's] revenues and both are critically important to an MLB club's economic health."¹⁰² To the extent that commenters assert that the sports blackout rules remain necessary to ensure the overall availability of telecasts of particular sports to the public, we request that they provide current revenue data for such sports, including total revenues, television revenues, and gate receipts.¹⁰³ We note that, during recent years, MLB has entered into other revenue-generating ventures, such as the MLB Channel, a baseball-related programming channel available to MVPD subscribers, and Extra Innings, which offers regular season game premium (pay) packages through MVPDs to their subscribers. MLB also offers regular season game packages directly to customers through MLB.tv. Such programming is streamed over the Internet and can be viewed on computers and mobile devices, as well as on televisions using devices such as Apple TV. Moreover, many teams either own the RSNs that carry their game telecasts or have obtained ownership interests in RSNs. Does the emergence of these additional revenue sources impact the relative importance of gate receipts and, accordingly, the continued

⁹⁸ See Sports Economists Comments at 13. The Sports Economists state that "[p]recise quantification of the increases in the prices and profits of the NFL is not possible because the NFL does not publicly release financial statements" but assert that "through the years scholars and journalists (notably the annual *Forbes* analysis of financial conditions in team sports) have estimated the revenues, costs, profits and ticket prices of NFL teams." *Id.* at 12-13.

⁹⁹ See *id.* at 13.

¹⁰⁰ See SFC Comments at 10-11, citing Jeff Howe, *Judge David Doty Rules that NFL Will Not Have Access to \$4 Billion in Television Revenue During a Lockout*, NESN (Mar. 1, 2011), available at <http://www.nesn.com/2011/03/judge-rules-that-nfl-will-not-have-access-to-4-billion-in-television-revenue-during-a-lockout.html> (noting NFL total revenue at about \$8 billion a year with television revenue at about \$4 billion of that), and John Vrooman, *The Football Players' Labor Market*, ECONOMICS OF THE NATIONAL FOOTBALL LEAGUE: THE STATE OF THE ART, at 3 (2011), available at <http://www.vanderbilt.edu/econ/faculty/Vrooman/vrooman-football-labor-market.pdf> ("NFL national television rights have exploded eighty-fold since 1970 and the League will take in \$4 billion annually in TV rights through 2013. These collectively negotiated fees are about 50 percent of total revenue and are shared equally among NFL clubs.").

¹⁰¹ See SFC Comments at 11, citing Vrooman, *The Football Players' Labor Market*, at 3.

¹⁰² Baseball Commissioner Comments at 7.

¹⁰³ We note that commenters may submit such information with a request for confidential treatment if necessary to prevent competitive harm. See 47 C.F.R. § 0.459.

need for the sports blackout rules? If gate receipts are not the primary or most significant source of revenue for these sports, why are the sports blackout rules necessary to ensure the overall availability of telecasts of these sports to the public?

3. Effect of Blackouts on Gate Receipts

24. We seek comment on the extent to which local blackouts of sports events affect attendance and gate receipts at those events and the extent to which the cable sports blackout rule itself affects attendance and gate receipts at sports events. As discussed above, the sports blackout rules are intended to address concerns that MVPDs' importation of a distant signal carrying a blacked-out sports event could lead to 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.¹⁰⁴ The objective of the sports blackout rules is not to ensure the profitability or financial viability of sports leagues, but rather to ensure the overall availability of sports programming to the general public.¹⁰⁵ Thus, we are interested in gate receipts and other revenues of sports leagues only to the extent that such revenues are relevant to this objective. Based on their review of several econometric studies of attendance at NFL games as well as other team sports in the U.S. and Europe, the Sports Economists conclude that there is no evidence that local blackouts of NFL games significantly affect either ticket sales or no-shows at those games.¹⁰⁶ We seek comment on the Sports Economists' conclusion and the underlying studies on which it relies. Do these studies support the conclusion that our sports blackout rules are no longer needed? For example, if local blackouts of NFL games do not significantly affect either ticket sales or no-shows at those games, does it follow that the cable sports blackout rule has no significant effect on attendance? Additionally, we invite commenters to submit any additional studies or evidence showing the extent to which local blackouts of NFL games impact gate receipts at those games and the extent to which the cable sports blackout rule itself impacts gate receipts. In particular, we note that the NFL asserts that its blackout policy, as supported by the Commission's sports blackout rules, is designed to promote high attendance at games.¹⁰⁷ We invite the NFL and other interested commenters to submit any available data or evidence indicating that the NFL's blackout policy in fact has the intended effect of promoting attendance at games. As noted above, only four cities were affected by local blackouts of NFL games in 2011: Buffalo, Cincinnati, San Diego, and Tampa Bay; in 2012, local blackouts of NFL games were limited to five cities: Buffalo, Cincinnati, Oakland, San Diego, and Tampa Bay. We seek comment on whether certain teams or cities are routinely disproportionately affected by local blackouts of NFL games and, if so, why. For example, some commenters suggest that certain cities are more severely impacted by blackouts because of conditions in the local economy (*e.g.*, locally high unemployment)¹⁰⁸ or a large

¹⁰⁴ See *supra* ¶ 7.

¹⁰⁵ See *id.*

¹⁰⁶ See Sports Economists Comments at 13-16. The Sports Economists list the studies upon which they rely and also note that more studies can be found by consulting the references in the listed studies. See *id.* at 14, 20-22. In addition, many of the individual consumers who commented indicate that blackouts of games do not motivate them to purchase tickets. See, *e.g.*, Paul Kane Comments at 1 ("The fact that a game isn't sold out, and therefore isn't televised, does not in any way compel me to purchase tickets, as I cannot afford them."); Mike Campbell Comments at 1 ("If a game gets blacked out, it doesn't entice me to buy a ticket, it just means I miss the game."); Michael Everett Comments at 1 ("I do not believe that enforcing [the sports blackout rule] causes the fan base to purchase more tickets. All it does is antagonize fans who already subsidize the team and stadium."); Paul Norconk Comments at 1 ("Simply put, blackouts don't make me buy tickets to games, they just make me mad at the NFL...."); Corinne McDaniels Comments at 1 ("TV blackouts do not encourage fans to purchase tickets; they only drive fans away from their beloved sport.").

¹⁰⁷ See NFL Comments at 7-9.

¹⁰⁸ See Petition at 6-7 ("Markets with above-average unemployment tend to suffer more blackouts. In the 2010 and 2011 seasons, the Tampa Bay Buccaneers had 10 straight games blacked out and the Cincinnati Bengals have had (continued....)

stadium capacity in a city with a relatively small population.¹⁰⁹ If these are the factors that lead to failure to sell out games, does blacking out a game promote attendance at future games in those cities? Are any cities affected by these factors able to sell out games on a regular basis? If so, why? To what extent does a team's performance lead to poor attendance and blackouts? For example, are blackouts more common when a team is not in playoff contention? Should this affect our analysis? If so, how?

25. Are the sports blackout rules necessary to sustain gate receipts or other revenues for NFL clubs? Commenters who assert that eliminating the sports blackout rules would result in a significant reduction in gate receipts or other revenues for NFL clubs should quantify or estimate the anticipated reduction and explain the basis for their estimates. We also seek comment on the connection between any such lost revenues and the willingness of teams to enter into agreements allowing broadcast coverage of their games, maximizing the availability of such broadcasts to the public

26. There is no specific information in the record regarding the effect of blackouts on gate receipts for any other sports events. We seek comment on whether blackouts have any significant effect on gate receipts for any sports events other than NFL games. Commenters should provide any available data or evidence to support their positions. What impact, if any, would elimination of the sports blackout rules be expected to have on gate receipts and other revenues for these sports? To the extent that commenters argue that eliminating the sports blackout rules would result in a significant reduction in gate receipts or other revenues for these sports, we request that they quantify or estimate the anticipated reduction and explain the basis for their estimates.

27. Some commenters suggest that blacking out games may actually harm, rather than support, ticket sales.¹¹⁰ We seek comment on whether blacking out sports events may have the unintended effect of alienating sports fans and discouraging their attendance at home games. According to the Petitioners, recent empirical studies suggest that televising professional sports may actually have a positive effect on attendance at home games.¹¹¹ Does televising sports events serve to generate interest among sports fans and thereby promote higher attendance at home games in the long run? If this is the case, then why would a professional sports league, such as the NFL, ever seek to black out games? For example, do commenters believe that the NFL is operating pursuant to a mistaken understanding of the relationship between blackouts and attendance? Or do commenters believe that the NFL has reason for maintaining its blackout policy other than attendance? Commenters are invited to submit any studies or evidence supporting the view that televising sports events encourages attendance at home games.

4. Other Relevant Data

28. We invite commenters to submit any other information or data that they believe is relevant to our assessment of whether the sports blackout rules remain necessary to ensure the overall

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their last seven games blacked out."); SFC Comments at 6 (noting that the unemployment rate for Tampa Bay was among the highest in the nation in 2011 at 11%).

¹⁰⁹ See Senator Blumenthal *et al.* Comments at 1 ("Ralph Wilson Stadium, home of the Buffalo Bills, seats 73,079. Soldier Field, home of the Chicago Bears, seats 61,500. Buffalo's population is 261,000; Chicago's is nearly 2.7 million. Yet despite these vast differences in population, Buffalo is expected to fill its larger stadium or its fans will not be able to watch their team play."); Sports Economists Comments at 14 ("[T]he principal cause of differences in attendance among NFL teams is differences in stadium capacity.").

¹¹⁰ See SFC Comments at 11; see also George Crissman Comments at 1 ("Although few of the local team games have been actually blacked-out, a great many more have been threatened with a blackout. The suspense of not knowing if the game will be telecast has reduced my interest in the sport to the point where I no longer plan to watch (or attend) the games. The blackout rule is a big reason why I no longer follow the local sports teams."); Jennifer Batt Comments at 1 ("when the Buffalo Bills black out games that do not sell out that is when I stop going to all games for the rest of that season.").

¹¹¹ See SFC Comments at 12 & n.28.

availability of sports telecasts to the public. For example, are changes in the video distribution market in the 40 years since the sports blackout rules were originally adopted, such as those described above in paragraph 23, relevant to our assessment? To what extent do sports leagues distribute games via such premium services today and what impact do such premium services have on the leagues' revenues and blackout policies? Commenters should explain how any such information supports or undercuts the economic basis for the sports blackout rules.

C. Elimination of the Sports Blackout Rules

29. We propose to eliminate the sports blackout rules. With respect to professional football, the sport most affected by the sports blackout rules, it appears from the existing record that television revenues have replaced gate receipts as the most significant source of revenue for NFL clubs in the 40 years since the rules were first adopted.¹¹² Moreover, the record received thus far indicates no direct link between blackouts and increased attendance at NFL games.¹¹³ The record also suggests that the sports blackout rules have little relevance for sports other than professional football, because the distribution rights for most of the games in these sports are sold by individual teams, rather than the leagues.¹¹⁴ Finally, it appears that the sports blackout rules are unnecessary because sports leagues can pursue local blackout protection through private contractual negotiations. Thus, it appears that the sports blackout rules have become obsolete. Accordingly, if the record in this proceeding, as updated and supplemented by commenters, confirms that the sports blackout rules are no longer necessary to ensure the overall availability to the public of sports telecasts, we propose to repeal these rules. We seek comment on this proposal.

30. We seek comment on how elimination of the sports blackout rules would affect sports leagues and teams and their ability, as holders of the exclusive distribution rights to their games, to control the distribution of home games in the teams' home territories. As discussed above, the sports leagues, not the Commission, are the source of sports blackouts.¹¹⁵ And the Commission's rules supplement the contractual relationships between the leagues or individual teams that hold the rights to the games and the entities to which they grant distribution rights by requiring MVPDs to black out games that are required by the sports leagues or individual teams to be blacked out on local television stations. To the extent that the Commission's rules are no longer needed to assure the continued availability of sports programming to the public, does the Commission have any continued interest in supplementing these contractual relationships? Should it instead be left to the sports leagues and individual teams to negotiate in the private marketplace whatever local blackout protection they believe they need?¹¹⁶

31. Several commenters argue that the compulsory copyright licenses granted to MVPDs under Sections 111 and 119 of the Copyright Act¹¹⁷ would make it difficult or impossible for sports leagues or teams to negotiate the protection provided by the sports blackout rules through private contracts.¹¹⁸ The compulsory licenses permit cable systems and, to a more limited extent, satellite carriers

¹¹² See *supra* ¶ 22.

¹¹³ See *supra* ¶ 24.

¹¹⁴ See *supra* ¶ 19.

¹¹⁵ See *supra* ¶¶ 2-10; see also NAB Comments at 1, 3-6; Sports Economists Comments at 2-5; NAB Reply Comments at 3; Network Affiliates Reply Comments at 1.

¹¹⁶ The Petitioners assert that if the sports leagues wish to continue their obsolete blackout policies, they should be required to do so through private contractual negotiations with MVPDs. See SFC Comments at 8, 14; SFC Reply Comments at 13-16; see also Sports Economists Comments at 18-19 ("If the FCC eliminates its blackout rules, the NFL can continue the status quo through provisions in its television contracts.").

¹¹⁷ See 17 U.S.C. §§ 111 (cable compulsory license), 119 (satellite compulsory license).

¹¹⁸ See NFL Comments at 4-6; Baseball Commissioner Comments at 10; NAB Comments at 8; Network Affiliates Comments at 1-2.

to retransmit the signals of distant broadcast stations without obtaining the consent of the sports leagues whose games are carried on those stations, when the carriage of such stations is permitted under FCC rules.¹¹⁹ Absent the sports blackout rules, these commenters argue, an MVPD would be able to take advantage of the compulsory license to retransmit the signal of a distant station carrying a game that has been blacked out locally by a sports league or team.¹²⁰

32. We seek comment on how the compulsory licenses would affect the ability of sports leagues and sports teams to obtain through market-based negotiations the same protection that is currently provided by the sports blackout rules. The NFL contends that, since it contracts with the CBS, NBC, and FOX networks for broadcast distribution of its games, it lacks privity with the local network affiliates that carry the games and with the MVPDs that retransmit the broadcast signals.¹²¹ Thus, it claims that ensuring that all of the other parties involved in the distribution of its games are contractually bound to honor the NFL's sports blackout policy would require rewriting hundreds of contracts, including contracts between the NFL and the CBS, NBC, and FOX networks, contracts between the networks and their affiliates, and contracts between the network affiliates and the MVPDs.¹²² The Petitioners assert that this argument ignores the direct privity of contract the sports leagues have with the MVPDs themselves, noting that virtually all MVPDs carry networks or game packages owned directly by the sports leagues, such as the NFL Network, MLB Network, NBA TV, NHL Network, and NFL Sunday Ticket (DIRECTV).¹²³ We seek comment on the extent to which the sports leagues contract directly with MVPDs for carriage of networks or game packages owned directly by the sports leagues. Do such contracts already include some form of blackout protection and, if so, what protection do these contracts provide? In this connection, the Commission has previously found that sports leagues routinely negotiate with MVPDs greater blackout protection than that afforded by the sports blackout rules, and the comments in the record support this finding.¹²⁴ For example, sports leagues and teams contractually negotiate with MVPDs blackouts of games throughout the teams' home territories, which generally extend well beyond the limited 35-mile zone of protection afforded by our sports blackout rules.¹²⁵ In

¹¹⁹ Under the Copyright Act, unlicensed retransmission of the copyrighted material in a broadcast signal constitutes copyright infringement. *See* 17 U.S.C. § 111(b). The Copyright Act grants cable systems a compulsory license for the retransmission of all local broadcast signals and distant signals that the Commission has permitted them to carry. *See id.* § 111(c). The Copyright Act also grants satellite carriers a compulsory license to retransmit the signals of local stations to any subscriber within a station's local market ("local-into-local" service). *See id.* § 122(a). The compulsory license granted to satellite carriers under the Copyright Act for distant stations is more limited than that granted to cable systems. Satellite carriers may retransmit signals of superstations (non-network stations) to any household and may retransmit the signals of distant network stations to subscribers only if local network stations are unavailable to the subscribers as part of a local-into-local satellite package or over the air. *See id.* § 119(a); *see also* 47 U.S.C. § 339.

¹²⁰ *See* NFL Comments at 4-6; Baseball Commissioner Comments at 10; NAB Comments at 8.

¹²¹ *See* NFL Comments at 6.

¹²² *See id.*

¹²³ *See* SFC Reply Comments at 14.

¹²⁴ *See SHVERA Section 208 Report to Congress* at ¶ 56; *see also* Baseball Commissioner Comments at 5 ("Indeed, the scope of blackout protection afforded by the Sports Blackout Rule is much narrower than the protection that [MLB] (and the other leagues) routinely negotiate in arms-length marketplace transactions....").

¹²⁵ *See SHVERA Section 208 Report to Congress* at ¶ 56; Baseball Commissioner Comments at 5 ("market-negotiated blackouts typically extend to a team's entire home territory, rather than only the limited 35-mile zone in which the Sports Rule applies."). For example, the NFL's agreement with DIRECTV (NFL Sunday Ticket) provides blackout protection throughout NFL teams' home territories, which typically extend well beyond the 35-mile zone of protection specified in the Commission's blackout rules. Under this agreement, San Diego Chargers fans that live in the Los Angeles area – more than 150 miles away from San Diego – are unable to watch the Chargers on NFL Sunday Ticket if the game is not sold out 72 hours in advance. *See* http://support.directv.com/app/answers/detail/a_id/484/kw/nfl%20sunday%20ticket%20blackouts/related/1 ("The

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addition, the sports blackout rules afford blackout protection only to the home teams, whereas sports leagues or teams often negotiate blackout protection for both the home and away teams.¹²⁶ Accordingly, if sports leagues and teams are able to obtain greater protection than that afforded under the sports blackout rules in arm's length marketplace negotiations, why do they need the sports blackout rules to avoid the impact of the compulsory licenses?

33. Moreover, the Commission has found that “[s]ports leagues control both broadcast carriage and MVPD retransmission of their programming.”¹²⁷ It observed that a broadcaster cannot carry a sports event without the permission of the sports leagues or clubs that hold the rights to the event and, under the retransmission consent rules, MVPDs, with limited exceptions, cannot carry a broadcaster’s signal without the permission of the broadcaster.¹²⁸ Thus, the Commission reasoned that a sports league could prevent unwanted MVPD retransmission through its contracts with broadcasters by requiring, as a term of carriage, the deletion of specific sports events.¹²⁹ Because the sports leagues could obtain local blackout protection through their contracts with broadcast stations, the Commission suggested that the sports leagues may not need the sports blackout rules to prevent MVPDs from using the compulsory licenses to carry blacked-out games.¹³⁰ Instead, it stated that the sports blackout rules may serve primarily as an enforcement mechanism for existing contracts between broadcasters and sports leagues.¹³¹ We seek comment on this analysis. Could sports leagues or teams prevent MVPDs from retransmitting certain sports events through their contracts with broadcasters? If so, especially given the popularity of certain sports programming, would leagues such as the NFL be well positioned to secure blackout protection through private contractual negotiations? Would leagues need to renegotiate existing contracts with broadcasters to secure such protection? If so, should that affect our analysis? What effect, if any, would the NFL’s lack of direct privity with the local network affiliates that carry the games have on its ability to control MVPD retransmission? What are the costs and benefits to sports leagues and teams of our elimination of the sports blackout rules? To the extent possible, we encourage commenters to quantify any costs and benefits and to submit supporting data.

34. We seek comment also on whether and how repeal of the sports blackout rules would affect consumers. We received more than 7,500 comments on the Petition from individual consumers who support elimination of the sports blackout rules. These comments indicate that sports blackouts, while less frequent now than when the sport blackout rules were first adopted, are still a significant source of frustration for consumers. Some of these consumers are disabled or elderly sports fans who are physically unable to attend games in person and rely on television (either broadcast or pay TV) to watch

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NFL has extended certain team’s home territory to cover all markets based on the nearest NFL franchise. For example, the San Diego Chargers home team territory has been extended to cover the Los Angeles area. This means that any home Chargers game will be blacked out in the entire Chargers home territory on both NFL SUNDAY TICKET and local CBS or FOX affiliates if it does not sell out at least 72 hours prior to kickoff.”). Similarly, MVPDs that offer their subscribers MLB’s Extra Innings package are contractually required to black out specific games on Extra Innings throughout the home territories of the teams participating in those games. See Senator Blumenthal *et al.* Comments at 2; *SHVERA Section 208 Report to Congress* at ¶ 56; MLB Blackouts FAQ at http://mlb.mlb.com/mlb/help/faq_blackout.jsp.

¹²⁶ See *SHVERA Section 208 Report to Congress* at ¶ 56.

¹²⁷ *Id.* at ¶ 59.

¹²⁸ See *id.*; see also SFC Reply Comments at 12 (“[I]n granting retransmission consent to a pay-TV provider to carry its signal locally, a broadcaster may demand that its signal not be used in another market, despite the fact that the copyright statutes would allow it.”).

¹²⁹ See *SHVERA Section 208 Report to Congress* at ¶ 59.

¹³⁰ See *id.*

¹³¹ See *id.*

their favorite teams.¹³² Others complain that they can no longer afford to attend games due to high ticket prices, the economy, or reduced income following retirement;¹³³ that they already subsidize professional sports through publicly funded stadiums and should be able to watch the games at home;¹³⁴ or that they pay a substantial premium to watch their favorite NFL team on DIRECTV's NFL Sunday Ticket but are sometimes unable to watch due to a blackout, even though they may live 150 miles or more from the team's stadium.¹³⁵ We seek comment on what impact, if any, repeal of the Commission's sports blackout rules would have on these and other consumers.

35. The Petitioners acknowledge that eliminating the Commission's sports blackout rules alone likely would not end local sports blackouts as sports fans may wish.¹³⁶ We note that the leagues' underlying blackout policies would remain, and, as discussed above, the leagues may be able to obtain the same blackout protection provided under our rules through free market negotiations.¹³⁷ The leagues also could still require local television stations to black out games; thus, consumers that rely on over-the-air television would still be unable to view blacked-out games.¹³⁸ Moreover, repeal of our sports blackout rules alone would not provide relief to consumers that are subject to blackouts resulting from the leagues' use of expansive home territories.¹³⁹ Nevertheless, the Petitioners assert that, "unless and until the Commission eliminates the [sports blackout rules], the sports leagues will be under no pressure to contractually negotiate for the protection that they claim is necessary."¹⁴⁰ The Petitioners suggest that, if the leagues find that such negotiations would be too daunting, eliminating the sports blackout rules may compel the leagues to lower ticket prices until all seats are sold out or perhaps to end blackouts altogether.¹⁴¹ We seek comment on whether there is any benefit to consumers of repealing the sports blackout rules if the sports leagues' underlying blackout policies remain. Is removing unnecessary or obsolete regulations in itself a sufficient justification for eliminating the sports blackout rules, even if there is no direct or immediate benefit to consumers?¹⁴² If the evidence in this proceeding, including any data or studies submitted by commenters, suggests that there are no tangible benefits to retaining the sports blackout rules but that these rules also do not cause any tangible harms, should the Commission repeal the sports blackout rules? Would removing the Commission's tacit endorsement of the leagues' blackout policies serve the public interest? Are the leagues more likely to relax or reconsider their blackout policies if the Commission's sports blackout rules are repealed? How does our analysis of the

¹³² See, e.g., Dora Lindemuth Comments at 1; Jane O'Boyle Comments at 1; Kevin Hanna Comments at 1; Jane Beaudet Comments at 1; Richard Cunningham Comments at 1; Ron Williamson Comments at 1; Kenneth B. Agbayani Comments at 1; Karen Monett Comments at 1; Leo Pagliei Comments at 1.

¹³³ See, e.g., John Hass Comments at 1; Debra Posey Comments at 1; Larry D. Cover Comments at 1; Melvin Dalrymple Comments at 1; Vanessa Hernandez Comments at 1; Mary Cross Comments at 1.

¹³⁴ See, e.g., Roger Gordon Comments at 1; Patrick Moran Comments at 1; Terry Hatcher Comments at 1; Kimberly Burke Comments at 1; Robert Johnson Comments at 1; Kelly Madruga Comments at 1; David J. Reynoso Comments at 1; Daryl Masamitsu Comments at 1.

¹³⁵ See, e.g., Tim Rose Comments at 1; Daniel Smith Comments at 1; Robert McDermott Comments at 1; David Coffaro Comments at 1; David Rea Comments at 1; Jon Witt Comments at 1; Michael Myers Comments at 1; Edward Smith Comments at 1; Michael E. Olin Comments at 1. See *supra* n.125.

¹³⁶ See SFC Reply Comments at 9.

¹³⁷ See *supra* ¶¶ 32-33

¹³⁸ See NFL Comments at 13.

¹³⁹ See *supra* nn.94, 125.

¹⁴⁰ See SFC Reply Comments at 16.

¹⁴¹ See *id.*

¹⁴² See Sports Economists Comments at 19 (noting that one of the main reasons to abandon the sports blackout rules is "to get rid of unnecessary regulation").

issues differ between professional sports leagues which have been granted exemptions from the antitrust laws and sports leagues which have not been granted antitrust protections?

36. Further, we invite comment on any potential harm to consumers of eliminating the sports blackout rules. Some commenters express concern that eliminating the sports blackout rules could accelerate the migration of sports from free over-the-air television to pay TV, which would be harmful to consumers who cannot afford pay TV.¹⁴³ As noted above, the compulsory copyright licenses granted to MVPDs apply to the retransmission of broadcast signals, not to pay TV content.¹⁴⁴ According to NAB, if the sports blackout rules are eliminated, “sports leagues wishing to retain control over distribution of their content would have an incentive to move to pay platforms where the compulsory license would not undermine their private agreements.”¹⁴⁵ Similarly, the NFL asserts that eliminating the sports blackout rules “would make broadcast television distribution more difficult, expensive and uncertain and accordingly would make cable network distribution a more appealing prospect.”¹⁴⁶ What percentage of consumers watch the sports programming they view on broadcast television channels rather than pay TV or via the Internet using premium services such as MLB.tv? Would repeal of the sports blackout rules hasten the migration of NFL games from broadcast television channels to pay TV? If so, is it appropriate for the Commission to have the objective of preventing such a migration? We note that the NFL recently extended its contracts with the CBS, FOX, and NBC television networks, ensuring that many NFL games will remain on broadcast television channels at least through the 2022 season.¹⁴⁷ In view of these contract extensions, it appears unlikely that NFL games would migrate further from broadcast television channels to pay TV in the near future.¹⁴⁸ We nevertheless seek comment on whether repeal of the sports blackout rules would likely encourage migration of NFL games to pay TV in the immediate future or in the longer term. What effect, if any, would repeal of the sports blackout rules have on migration to pay TV of sports other than professional football? In this regard, the record suggests that other professional sports teams already distribute a majority of their regular season games via RSNs and other cable networks.¹⁴⁹ Is elimination of the sports blackout rules likely to result in any further migration of these sports from broadcast television channels to pay TV? Are there any other potential harms to consumers from repealing the sports blackout rules? We encourage commenters to quantify, to the extent possible, any benefits and costs to consumers of eliminating the sports blackout rules and to submit supporting data.

37. Some commenters argue that eliminating the sports blackout rules would undermine broadcasters’ local program exclusivity and harm localism.¹⁵⁰ These commenters assert that the sports

¹⁴³ See NAB Comments at 8; NAB Reply Comments at 4; NFL Comments at 13; NFL Reply Comments at 2; Network Affiliates Comments at 2.

¹⁴⁴ See *supra* ¶ 31.

¹⁴⁵ See NAB Comments at 8; see also Network Affiliates Reply Comments at 2 (“Because sports leagues would be limited in their ability to manage the television distribution of their events, they would have a substantial incentive to move their programming to pay-television services, with whom compulsory copyright license regime would not undermine private distribution agreements.”).

¹⁴⁶ See NFL Comments at 13.

¹⁴⁷ See *id.* at 3. The Sports Economists note that the NFL has moved *Monday Night Football* (17 games) from ABC to ESPN, and in 2012 televised 15 Thursday night games on *NFL Network*. See Sports Economists Comments at 17.

¹⁴⁸ See SFC Reply Comments at 8 (asserting that “[t]he recently announced multi-year, multi-billion dollar NFL broadcast agreements would probably remain in effect regardless of any changes” to the sports blackout rules). We seek comment on the accuracy of this prediction.

¹⁴⁹ See NFL Comments at 10 (“the migration of sports to cable television networks has been pronounced, with every other major sport moving a majority of its regular season games (and indeed, many playoff games) to cable television networks”).

¹⁵⁰ See NAB Comments at 6-7; Network Affiliates Reply Comments at 1-2; see also NFL Comments at 2. See also H.R. Rep. No. 106-86(I), at 10 (“the Committee reasserts the importance of protecting and fostering the system of
(continued....)

blackout rules, together with the network non-duplication and syndicated exclusivity rules, support local broadcasters' investments in high quality, diverse informational and entertainment programming.¹⁵¹ By hindering the ability of local broadcast stations to obtain and enforce exclusive local program rights, they assert, elimination of the sports blackout rules would make it more difficult for the stations to attract advertising, which in turn would reduce their ability to invest in local information programming and popular programming.¹⁵² Would elimination of the sports blackout rules have a negative impact on localism? What, if any, costs and benefits would repeal of the sports blackout rules have on broadcasters? To the extent possible, we encourage commenters to quantify any costs and benefits and to submit data supporting their positions.

38. We seek comment also on whether and how elimination of the sports blackout rules would affect any other entities. Some commenters assert that under the Copyright Act any change in the sports blackout rules will trigger a proceeding before the Copyright Royalty Tribunal to adjust the compulsory licensing rates that cable systems pay.¹⁵³ Would such a rate adjustment proceeding be mandatory or discretionary on the part of the Copyright Royalty Tribunal? In this regard, we note that the Copyright Act provides that, if the sports blackout rules are changed, the compulsory licensing rates "*may be adjusted* to assure that such rates are reasonable in light of the changes."¹⁵⁴ What burdens and costs would a rate adjustment proceeding impose on the Copyright Royalty Tribunal and any other entities? Are there any other entities that would be impacted by elimination of the sports blackout rules? If so, what are the benefits and costs of elimination for those entities? We request that commenters quantify any benefits and costs to the extent possible and submit supporting data.

39. Finally, we seek comment on whether, as an alternative to outright repeal of the sports blackout rules, we should make modifications to these rules. If so, what modifications should we make, and why would such modifications be preferable to repeal of the sports blackout rules? Commenters that propose any such modifications should quantify the benefits and costs of their proposals and provide supporting data.

IV. PROCEDURAL MATTERS

A. Ex Parte Presentations

40. The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹⁵⁵ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies).

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television networks as they relate to the concept of localism. It is well recognized that television broadcast stations provide valuable programming tailored to local needs, such as news, weather, special announcements and information related to local activities. To that end, the Committee has adopted provisions that grant local broadcast stations ... network nonduplication, syndicated exclusivity and sports blackout provisions to protect local broadcasters' program exclusivity rights."). *But see Cable Sports Blackout Order*, 54 FCC Rcd at 277-278, ¶¶ 40-43 (noting that the Commission has restricted the number of distant signals which may be imported into television markets by cable television systems and concluding that "the distant signals permitted will not adversely affect local television service").

¹⁵¹ See NAB Comments at 7; Network Affiliates Reply Comments at 2.

¹⁵² See NAB Comments at 7; Network Affiliates Reply Comments at 2.

¹⁵³ See Baseball Commissioner Comments at 9; NAB Reply Comments at 3-4; *see also* 17 U.S.C. § 801(b)(2)(C) ("In the event of any change in the rules and regulations of the Federal Communications Commission with respect to syndicated and sports program exclusivity after April 15, 1976, the rates established by section 111(d)(1)(B) may be adjusted to assure that such rates are reasonable in light of the changes to such rules and regulations").

¹⁵⁴ See 17 U.S.C. § 801(b)(2)(C) (emphasis added).

¹⁵⁵ 47 C.F.R. §§ 1.1200 *et seq.*

Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Initial Regulatory Flexibility Analysis.

41. The Regulatory Flexibility Act of 1980, as amended ("RFA"), requires that a regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

42. With respect to this Notice, an Initial Regulatory Flexibility Analysis ("IRFA") under the Regulatory Flexibility Act¹⁵⁶ is contained in Appendix D. Written public comments are requested in the IRFA, and must be filed in accordance with the same filing deadlines as comments on the *NPRM*, with a distinct heading designating them as responses to the IRFA. The Commission will send a copy of this *NPRM*, including the IRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, a copy of this *NPRM* and the IRFA will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the *Federal Register*.

C. Paperwork Reduction Act Analysis.

43. This document does not contain proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

D. Comment Filing Procedures

44. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.

¹⁵⁶ *See* 5 U.S.C. § 603.

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
- People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

45. *Additional Information:* For additional information on this proceeding, please contact Kathy Berthot of the Media Bureau, Policy Division, Kathy.Berthot@fcc.gov, (202) 418-7454.

V. ORDERING CLAUSES

46. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in Sections 1, 4(i), 4(j), 303(r), 339(b), and 653(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303(r), 339(b), 573(b), this Notice of Proposed Rulemaking **IS ADOPTED**.

47. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

48. **IT IS FURTHER ORDERED** that the Petition for Rulemaking filed by Sports Fan Coalition, Inc. *et al.* **IS GRANTED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**List of Commenters****Comments filed in MB Docket No. 12-3**

Congressman Brian Higgins

Economists Robert Baade of Forest College, Dennis Coates of the University of Maryland Baltimore County, Rodney Fort of the University of Michigan, Ira Horowitz of the University of Florida, Brad Humphreys of the University of Alberta, Roger G. Noll of Stanford University, Allen Sanderson of the University of Chicago, John J. Siegfried of Vanderbilt University, and Andrew Zimbalist of Smith College (“Sports Economists”)

National Association of Broadcasters (“NAB”)

The National Football League (“NFL”)

The Office of the Commissioner of Baseball (“Baseball Commissioner”)

Senators Richard Blumenthal, Sherrod Brown, Tom Harkin, Debbie Stabenow, and Frank Lautenberg (deceased) (“Senator Blumenthal *et al.*”)

Sports Fan Coalition, Inc., National Consumers League, Public Knowledge, League of Fans, and Media Access Project (“Petitioners” or “SFC”)

Reply Comments filed in MB Docket No. 12-3

CBS Television Network Affiliates Association, NBC Television Affiliates, and ABC Television Affiliates Association (“Network Affiliates”)

National Association of Broadcasters (“NAB”)

The National Football League (“NFL”)

Sports Fan Coalition, Inc., National Consumers League, Public Knowledge, League of Fans, and Media Access Project (“Petitioners” or “SFC”)

In addition, a number of individual consumers filed comments in this proceeding.

APPENDIX B**Text of Sports Blackout Rules****§ 76.111 Cable sports blackout.**

(a) No community unit located in whole or in part within the specified zone of a television broadcast station licensed to a community in which a sports event is taking place, shall, on request of the holder of the broadcast rights to that event, or its agent, carry the live television broadcast of that event if the event is not available live on a television broadcast station meeting the criteria specified in § 76.128. For purposes of this section, if there is no television station licensed to the community in which the sports event is taking place, the applicable specified zone shall be that of the television station licensed to the community with which the sports event or team is identified, or, if the event or local team is not identified with any particular community, the nearest community to which a television station is licensed.

(b) Notification of the programming to be deleted pursuant to this section shall include the following information:

(1) As to programming to be deleted from television broadcast signals regularly carried by the community unit:

(i) The name and address of the party requesting the program deletion;

(ii) The date, time and expected duration of the sports event the television broadcast of which is to be deleted;

(iii) The call letters of the television broadcast station(s) from which the deletion is to be made.

(2) As to programming to be deleted from television broadcast signals not regularly carried by the community unit:

(i) The name and address of the party requesting the program deletion;

(ii) The date, time and expected duration of the sports event the television broadcast of which is to be deleted.

(c) Notifications given pursuant to this section must be received, as to regularly scheduled events, no later than the Monday preceding the calendar week (Sunday-Saturday) during which the program deletion is to be made. Notifications as to events not regularly scheduled and revisions of notices previously submitted, must be received within twenty-four (24) hours after the time of the telecast to be deleted is known, but in any event no later than twenty-four (24) hours from the time the subject telecast is to take place.

(d) Whenever, pursuant to this section, a community unit is required to delete a television program on a signal regularly carried by the community unit, such community unit may, consistent with the rules contained in Subpart F of this part, substitute a program from any other television broadcast station. A program substituted may be carried to its completion, and the community unit need not return to its regularly carried signal until it can do so without interrupting a program already in progress.

(e) The provisions of this section shall not be deemed to require the deletion of any portion of a television signal which a community unit was lawfully carrying prior to March 31, 1972.

(f) The provisions of this section shall not apply to any community unit having fewer than 1,000 subscribers.

§76.127 Satellite sports blackout.

(a) Upon the request of the holder of the broadcast rights to a sports event, or its agent, no satellite carrier shall retransmit to subscribers within the area comprising the specified zone a “nationally distributed superstation” or “network station” carrying the live television broadcast of a sports event if the event is not available live on a television broadcast station meeting the criteria specified in § 76.128. For purposes of this section, if there is no television station licensed to the community in which the sports event is taking place, the applicable specified zone shall be that of the television station licensed to the community with which the sports event or team is identified, or, if the event or local team is not identified with any particular community, the nearest community to which a television station is licensed.

(b) Notification of the programming to be deleted pursuant to this Section shall include the following information:

- (1) The name and address of the party requesting the program deletion;
- (2) The date, time and expected duration of the sports event the television broadcast of which is to be deleted;
- (3) The call letters of the nationally distributed superstation or network station(s) from which the deletion is to be made;
- (4) The U.S. postal zip codes that encompass the specified zone.

(c) Notifications given pursuant to this Section must be received by the satellite carrier, as to regularly scheduled events, within forty-eight (48) hours after the time of the telecast to be deleted is known, and no later than the Monday preceding the calendar week (Sunday-Saturday) during which the program deletion is to be made. Notifications as to events not regularly scheduled and revisions of notices previously submitted, must be received within twenty-four (24) hours after the time of the telecast to be deleted is known, but in any event no later than twenty-four (24) hours from the time the subject telecast is to take place.

(d) A satellite carrier is not required to delete a sports event from an individual subscriber who is located outside the specified zone, notwithstanding that the subscriber lives within a zip code provided by the holder of the broadcast rights pursuant to paragraph (b) of this Section.

(e) A satellite carrier is not required to delete a sports event if it has fewer than 1,000 subscribers within the relevant specified zone who subscribe to the nationally distributed superstation or network station carrying the sports event for which deletion is requested pursuant to paragraph (b) of this Section.

(f) Notwithstanding paragraph (c) of this Section, for sports events to be deleted on or before March 31, 2001, notification must be received by satellite carriers at least 60 full days prior to the day the telecast is to be deleted.

§ 76.128 Application of sports blackout rules.

The cable and satellite sports blackout rules (§§ 76.111 and 76.127) may apply when the sports event is not available live on any of the following television broadcast stations carried by a cable system or other MVPD:

- (a) Television broadcast stations within whose specified zone the community of the community unit or the community within which the sporting event is taking place is located, in whole or in part;
- (b) For communities in television markets other than major markets as defined in § 76.51, television broadcast stations within whose Grade B contours the community of the community unit or the community within which the sporting event is taking place is located, in whole or in part;
- (c) Television broadcast stations licensed to other designated communities which are generally considered to be part of the same television market (Example: Burlington, Vt.–Plattsburgh, N.Y. or Cincinnati, Ohio–Newport, Ky., television markets);
- (d) Television broadcast stations that are significantly viewed, pursuant to § 76.54, in the community unit or community within the specified zone.

§ 76.1506 Carriage of television broadcast signals.

(m) Section 76.67 shall apply to open video systems in accordance with the provisions contained in this paragraph.

- (1) Any provisions of section 76.67 that refers to a “community unit” shall apply to an open video system or that portion of an open video system that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas).

(2) Notification of programming to be deleted pursuant to this section shall be served on the open video system operator. The open video system operator shall make all notifications immediately available to the appropriate video programming providers on its open video system. An open video system operator shall not be subject to sanctions for any violation of these rules by an unaffiliated program supplier if the operator provided proper notices to the program supplier and subsequently took prompt steps to stop the distribution of the infringing program once it was notified of a violation.

APPENDIX C**Proposed Rules**

The Federal Communications Commission proposes to amend Part 76 of Title 47 of the Code of Federal Regulations (CFR) as set forth below:

PART 76 – Multichannel Video and Cable Television Service

1. The authority citation for Part 76 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Remove §§ 76.111, 76.127 and 76.128.

3. Amend § 76.120 by removing paragraph (e)(3) and revising the heading of § 76.120 to read as follows:

§ 76.120 Network non-duplication protection and syndicated exclusivity rules for satellite carriers: Definitions.

4. Amend § 76.130 by revising the first sentence to read as follows:

§ 76.130 Substitutions.

Whenever, pursuant to the requirements of the network program non-duplication or syndicated program exclusivity rules, a satellite carrier is required to delete a television program from retransmission to satellite subscribers within a zip code area, such satellite carrier may, consistent with this Subpart, substitute a program from any other television broadcast station for which the satellite carrier has obtained the necessary legal rights and permissions, including but not limited to copyright and retransmission consent. * * *

5. Amend § 76.1506 by removing paragraph (m) and redesignating paragraphs (n) and (o) as paragraphs (m) and (n).

APPENDIX D

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”),¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (“IRFA”) concerning the possible significant economic impact on small entities by the policies and rules proposed in the *Notice of Proposed Rulemaking* (“NPRM”). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (“SBA”).² In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the *Federal Register*.³

A. Need for, and Objectives of, the Proposed Rule Changes

2. The *NPRM* proposes to eliminate the sports blackout rules, which prohibit certain multichannel video programming distributors (“MVPDs”) (cable, satellite, and open video systems (“OVS”)) from retransmitting, within a protected local blackout zone, the signal of a distant broadcast station carrying a live sports event if the event is not available live on a local television broadcast station.⁴ The sports blackout rules were originally adopted nearly 40 years ago, when the primary source of revenue for sports leagues was game ticket sales.⁵ The sports blackout rules were intended to ensure that the potential loss of ticket sales resulting from MVPD retransmission of distant stations did not cause sports leagues to refuse to sell their rights to sports events to the distant stations, thereby reducing the overall availability of sports telecasts to the public.⁶ The sports industry has changed dramatically in the past four decades, however, and it appears that the sports blackout rules may no longer be necessary to assure the overall availability of sports programming.

3. The *NPRM* tentatively concludes that the Commission has the authority to eliminate the cable sports blackout rule under its general rulemaking power, given that Congress did not explicitly mandate that the Commission adopt the cable sports blackout rule.⁷ Because Congress directed the Commission to extend the sports blackout protection applied to cable to satellite and OVS, the *NPRM* seeks comment on whether the Commission also has the authority to repeal the sports blackout rules for satellite and OVS.⁸ In addition, the *NPRM* seeks comment on whether there is a continued need for the

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ See 47 C.F.R. §§ 76.111, 76.127, 76.128, 76.1506(m).

⁵ 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 265, 282, ¶ 57 (1975), *recon. granted in part, denied in part*, 56 FCC 2d 561 (1975). The sports blackout rules were initially applied to cable systems and later extended to OVS and satellite systems. See *Implementation of Section 302 of the Telecommunications Act of 1996*, Second Report and Order, 11 FCC Rcd 18223, 18226-7, ¶ 1 (1996), *recon. granted in part, denied in part*, Third Report and Order and Second Order on Reconsideration, 11 FCC Rcd 20227 (1996); *Implementation of the Satellite Home Viewer Improvement Act of 1999: Application of Network Non-Duplication, Syndicated Exclusivity, and Sports Blackout Rules to Satellite Retransmissions of Broadcast Signals*, Report and Order, 15 FCC Rcd 21688, 21689, ¶ 1 (2000), *recon. granted in part, denied in part*, Order on Reconsideration, 17 FCC Rcd 27875 (2002).

⁶ See *id.*

⁷ See *NPRM* at ¶ 15.

⁸ See *id.*

sports blackout rules. In particular, the *NPRM* seeks comment on whether the economic rationale underlying the sports blackout rules is still valid.⁹ Finally, the *NPRM* proposes to repeal the sports blackout rules and seeks comment on the benefits and costs of such repeal on interested parties, including the sports leagues, broadcasters, and consumers.¹⁰

B. Legal Basis

4. The proposed action is authorized pursuant to the authority found in Sections 1, 4(i), 4(j), 303(r), 339(b), and 653(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303(r), 339(b), and 573(b).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.¹¹ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹² In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹³ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹⁴ Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

6. *Wired Telecommunications Carriers.* The 2007 North American Industry Classification System (“NAICS”) defines “Wired Telecommunications Carriers” as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”¹⁵ All establishments listed above are included in the SBA’s broad economic census category, Wired Telecommunications Carriers,¹⁶ which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.¹⁷ Census data for 2007 shows that there were 31,996

⁹ See *id.* at ¶¶16-28.

¹⁰ See *id.* at ¶¶29-39.

¹¹ 5 U.S.C. § 603(b)(3).

¹² 5 U.S.C. § 601(6).

¹³ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

¹⁴ 15 U.S.C. § 632.

¹⁵ U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers,” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

¹⁶ See 13 C.F.R. § 121.201; 2012 NAICS code 517110.

¹⁷ *Id.*

establishments that operated that year.¹⁸ Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.¹⁹ Therefore, under this size standard, the majority of such businesses can be considered small entities.

7. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline businesses. This category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services.”²⁰ The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees.²¹ Census data for 2007 shows that there were 31,996 establishments that operated that year.²² Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.²³ Therefore, under this size standard, we estimate that the majority of such businesses can be considered small entities.

8. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide.²⁴ Industry data shows that there were 1,141 cable companies at the end of June 2012.²⁵ Of this total, all but ten cable operators nationwide

¹⁸ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

¹⁹ *Id.*

²⁰ U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition), at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>. Examples of this category are: broadband Internet service providers (e.g., cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed circuit television (CCTV) services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system (DTH) services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (MMDS).

²¹ 13 C.F.R. § 121.201; 2012 NAICS code 517110.

²² U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

²³ *Id.*

²⁴ 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the Cable Television Consumer Protection And Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, MM Docket No. 93-215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408, ¶ 28 (1995).

²⁵ NCTA, Industry Data, Number of Cable Operating Companies (June 2012), <http://www.ncta.com/Statistics.aspx> (visited Sept. 28, 2012). Depending upon the number of homes and the size of the geographic area served, cable operators use one or more cable systems to provide video service. See *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, MB Docket No. 12-203, Fifteenth Report, 28 FCC Rcd 10496, 10505-6, ¶ 24 (2013) (“15th Annual Competition Report”).

are small under this size standard.²⁶ In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.²⁷ Current Commission records show 4,945 cable systems nationwide.²⁸ Of this total, 4,380 cable systems have less than 20,000 subscribers, and 565 systems have 20,000 or more subscribers, based on the same records. Thus, under this standard, we estimate that most cable systems are small entities.

9. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."²⁹ There are approximately 56.4 million incumbent cable video subscribers in the United States today.³⁰ Accordingly, an operator serving fewer than 564,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.³¹ Based on available data, we find that all but ten incumbent cable operators are small entities under this size standard.³² We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.³³ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

10. *Television Broadcasting*. This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public."³⁴ The SBA has created the following small business size standard for such businesses: those having \$14

²⁶ See SNL Kagan, "Top Cable MSOs – 12/12 Q"; available at <http://www.snl.com/InteractiveX/TopCableMSOs.aspx?period=2012Q4&sortcol=subscribersbasic&sortorder=desc>. We note that, when applied to an MVPD operator, under this size standard (*i.e.*, 400,000 or fewer subscribers) all but 14 MVPD operators would be considered small. See NCTA, Industry Data, Top 25 Multichannel Video Service Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013). The Commission applied this size standard to MVPD operators in its implementation of the CALM Act. See *Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, MB Docket No. 11-93, Report and Order, 26 FCC Rcd 17222, 17245-46, ¶ 37 (2011) ("*CALM Act Report and Order*") (defining a smaller MVPD operator as one serving 400,000 or fewer subscribers nationwide, as of December 31, 2011).

²⁷ 47 C.F.R. § 76.901(c).

²⁸ The number of active, registered cable systems comes from the Commission's Cable Operations and Licensing System (COALS) database on Aug. 28, 2013. A cable system is a physical system integrated to a principal headend.

²⁹ 47 U.S.C. § 543(m)(2); see 47 C.F.R. § 76.901(f) & nn. 1-3.

³⁰ See NCTA, Industry Data, Cable Video Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013).

³¹ 47 C.F.R. § 76.901(f); see *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (Cable Services Bureau 2001).

³² See NCTA, Industry Data, Top 25 Multichannel Video Service Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013).

³³ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. See 47 C.F.R. § 76.901(f).

³⁴ U.S. Census Bureau, 2012 NAICS Definitions, "515120 Television Broadcasting," at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

million or less in annual receipts.³⁵ The Commission has estimated the number of licensed commercial television stations to be 1,386.³⁶ In addition, according to Commission staff review of the BIA Advisory Services, LLC's *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of \$14 million or less.³⁷ We therefore estimate that the majority of commercial television broadcasters are small entities.

11. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations³⁸ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

12. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396.³⁹ These stations are non-profit, and therefore considered to be small entities.⁴⁰

13. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic "dish" antenna at the subscriber's location. DBS, by exception, is now included in the SBA's broad economic census category, Wired Telecommunications Carriers,⁴¹ which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.⁴² Census data for 2007 shows that there were 31,996 establishments that operated that year.⁴³

³⁵ 13 C.F.R. § 121.201; 2012 NAICS code 515120.

³⁶ See *Broadcast Station Totals as of June 30, 2013*, Press Release (MB rel. July 10, 2013) ("*July 10, 2013 Broadcast Station Totals Press Release*"), at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-322079A1.pdf.

³⁷ We recognize that BIA's estimate differs slightly from the FCC total given *supra*.

³⁸ "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 C.F.R. § 21.103(a)(1).

³⁹ See *July 10, 2013 Broadcast Station Totals Press Release*.

⁴⁰ See generally 5 U.S.C. §§ 601(4), (6).

⁴¹ See 13 C.F.R. § 121.201, 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry." (*Emphasis added to text relevant to satellite services.*) U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers," at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁴² 13 C.F.R. § 121.201; 2012 NAICS code 517110.

⁴³ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, "Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census," NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.⁴⁴ Therefore, under this size standard, the majority of such businesses can be considered small entities. However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled “Cable and Other Program Distribution.” The definition of Cable and Other Program Distribution provided that a small entity is one with \$12.5 million or less in annual receipts.⁴⁵ Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network.⁴⁶ Each currently offer subscription services. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined under the superseded SBA size standard would have the financial wherewithal to become a DBS service provider.

14. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA’s broad economic census category, Wired Telecommunications Carriers,⁴⁷ which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.⁴⁸ Census data for 2007 show that there were 31,996 establishments that operated that year.⁴⁹ Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.⁵⁰ Therefore, under this size standard, the majority of such businesses can be considered small entities.

15. *Home Satellite Dish (HSD) Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers’ receipt of video programming. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Wired Telecommunications Carriers.⁵¹ The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees.⁵² Census data for 2007 show that there were 31,996 establishments that

⁴⁴ *Id.*

⁴⁵ See 13 C.F.R. § 121.201, NAICS code 517510 (2002).

⁴⁶ See *15th Annual Competition Report*, 28 FCC Rcd at 10507, ¶ 27. As of June 2012, DIRECTV is the largest DBS operator and the second largest MVPD in the United States, serving approximately 19.9 million subscribers. DISH Network is the second largest DBS operator and the third largest MVPD, serving approximately 14.1 million subscribers. *Id.* at 10507, 10546, ¶¶ 27, 110-11.

⁴⁷ 13 C.F.R. § 121.201; 2012 NAICS code 517110.

⁴⁸ See *id.*

⁴⁹ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

⁵⁰ *Id.*

⁵¹ 13 C.F.R. § 121.201; 2012 NAICS code 517110.

⁵² See *id.*

operated that year.⁵³ Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.⁵⁴ Therefore, under this size standard, the majority of such businesses can be considered small entities.

16. *Open Video Systems.* The open video system (OVS) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.⁵⁵ The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,⁵⁶ OVS falls within the SBA small business size standard covering cable services, which is “Wired Telecommunications Carriers.”⁵⁷ The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees.⁵⁸ Census data for 2007 shows that there were 31,996 establishments that operated that year.⁵⁹ Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.⁶⁰ Therefore, under this size standard, we estimate that the majority of these businesses can be considered small entities. In addition, we note that the Commission has certified some OVS operators, with some now providing service.⁶¹ Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises.⁶² The Commission does not have financial or employment information regarding the other entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

17. *Cable and Other Subscription Programming.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in operating studios and facilities

⁵³ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

⁵⁴ *Id.*

⁵⁵ 47 U.S.C. § 571(a)(3)-(4); see *Implementation of Section 19 of the 1992 Cable Act and Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 06-189, Thirteenth Report, 24 FCC Rcd 542, 606, ¶ 135 (2009) (“13th Annual Competition Report”).

⁵⁶ See 47 U.S.C. § 573.

⁵⁷ See 13 C.F.R. § 121.201, 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined in part as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services.” U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers,” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁵⁸ 13 C.F.R. § 121.201; 2012 NAICS code 517110.

⁵⁹ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

⁶⁰ *Id.*

⁶¹ A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovsccer.html>.

⁶² See 13th Annual Competition Report, 24 FCC Rcd at 606-07, ¶ 135. BSPs are newer businesses that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

for the broadcasting of programs on a subscription or fee basis. These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.”⁶³ The SBA has developed a small business size standard for this category, which is: all such businesses having \$15 million dollars or less in annual revenues.⁶⁴ Census data for 2007 show that there were 659 establishments that operated that year.⁶⁵ Of that number, 462 operated with annual revenues of \$9,999,999 dollars or less.⁶⁶ One hundred ninety-seven (197) operated with annual revenues of between \$10 million and \$100 million or more.⁶⁷ Thus, under this size standard, the majority of such businesses can be considered small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

18. The proposed rule changes discussed in the *NPRM* would affect compliance requirements. The proposed rule changes would eliminate the sports blackout rules, which prohibit certain MVPDs from televising the home game of a sports team within a specified geographic area surrounding a television broadcast station licensed to the community in which the game is being played if the game is not available live on a television broadcast station in that community.

E. Steps Taken to Minimize Significant Impact on Small Entities and Significant Alternatives Considered

19. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.⁶⁸

20. As discussed in the *NPRM*, repeal of the sports blackout rules would not eliminate the sports leagues’ underlying blackout policies.⁶⁹ Rather, it would simply remove Commission support for these policies. Sports leagues would still be able to require local television broadcast stations to blackout games. In addition, sports leagues would likely be able to obtain the same protection afforded under the sports blackout rules either through market-based negotiations with MVPDs or through their contracts with broadcasters by requiring, as a term of carriage, the deletion of specific sports events. Accordingly, we believe that repeal of the sports blackout rules would impose only minimal burdens on any affected

⁶³ U.S. Census Bureau, 2012 NAICS Definitions, “515210 Cable and Other Subscription Programming,” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁶⁴ 13 C.F.R. § 121.201; 2012 NAICS code 515210.

⁶⁵ See U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Receipts Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 515210, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ 5 U.S.C. § 603(c).

⁶⁹ See *NPRM* at ¶¶ 30, 35.

entities. For this reason, an analysis of alternatives to the proposed rule changes is unnecessary. We invite comment on whether there are any alternatives we should consider that would minimize any adverse impact on small entities, but which maintain the benefits of our proposal.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule

21. None.