United States Senate
WASHINGTON, DC 20510

February 13, 2012

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

Dear Madam Secretary, Chairman Genachowski, and Commissioners:

We write pursuant to the Federal Communication Commission's (FCC) request for comment on a petition for rulemaking regarding sports blackouts.[1] We applaud the FCC's decision to solicit comment on this important issue, and wish to add our voices to the chorus calling for reform.

Under the FCC's sports blackout rule, multichannel video programming distributors (MVPDs) like cable and satellite companies are prohibited from carrying a sporting event if the event is blacked out on local broadcast television stations.[2] One common application of this rule applies to National Football League (NFL) games, which are shown on broadcast channels like NBC and FOX. Under NFL rules, if a game is not sold out within 72 hours of kickoff, the broadcaster in the game's home market is prohibited from showing the game. Under the sports blackout rule, the game is also blacked out on cable and satellite services.

The petition for rulemaking notes that leagues' blackout rules harm fans.[3] Our country's difficult economy and the rising prices of tickets have made attending a football game an unaffordable luxury for many fans. Further, the placement of large stadiums in less-populous areas makes it particularly difficult for games to sell out. 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.

These blackouts occur regardless of a team's success. In 2010, the San Diego Chargers' home opener was blacked out despite the Chargers winning their divisional title the previous season. The 2011 Cincinnati Bengals advanced to the playoffs, but fans only got to watch two of the Bengals' eight home games on television.

There were 16 blackouts in the 2011 NFL season. There were 23 in 2010, and 22 the year before. These blackouts are ruining the experience of rooting for the home team and are unjustly

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[1] Commission Seeks Comment on Petition for Rulemaking Seeking Elimination of the Sports Blackout Rule (Jan. 12, 2012), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0112/DA-12-44A1.pdf.
[2] *See* 47 C.F.R. §§ 76.111, 76.120, 76.127-130.
[3] Petition for Rulemaking to Eliminate the Sports Blackout Rule (Nov. 11, 2012), *available at* http://sportsfans.org/wp-content/uploads/2011/11/Petition-for-Rulemaking-FINAL.pdf.

hurting fans. That many of these stadiums were constructed or remodeled using taxpayer dollars underscores the disservice done to fans by blackouts.

We believe it is time for the NFL's blackout policy to end. It is a relic of a different time and although its purported purpose—protecting the league's ability to make a profit by encouraging fans to attend games—may have been valid when it was implemented decades ago, in today's environment of multi-billion dollar NFL TV contracts,[4] the sports blackout rule appears to be merely punitive.

The NFL is not the only league that blacks out games. Major League Baseball (MLB) enforces a byzantine set of broadcast restrictions that results in blackouts. MLB's complex system of local markets assigns teams to expansive media markets. A fan in the "home" market of a team is only able to watch the team via the network that has the rights to the team's game and is unable to watch the game via various other options, such as "Extra Innings" premium channels or MLB's premium internet-streaming service, MLB.TV.[5] If teams were only assigned to markets where the local cable or satellite provider carried the network that showed the games, this would not be a problem. Unfortunately, MLB's broadcast map vastly overestimates the availability of these networks. Many fans reside in areas where the "local" team's games are not available via broadcast, cable, or satellite, but are still counted in that team's market and are unable to watch the games via any means. The most egregious examples occur in Hawaii and Alaska, where fans are thousands of miles away from their supposed home team yet find these games blacked out when they try to watch them via premium packages.[6]

On the other side of the spectrum, fans who live in areas that are relatively near several teams may find themselves claimed by multiple teams yet still discover that some or all teams' games are not available. Iowa, for example, is assigned to the Chicago Cubs and White Sox, Kansas City Royals, Milwaukee Brewers, Minnesota Twins, and St. Louis Cardinals.[7] A resident of northeastern Iowa may not have access to channels that show Kansas City and St. Louis games, and a resident of southwestern Iowa may not have access to channels showing Milwaukee and Minnesota games, yet if these residents tried to watch the games through premium packages like Extra Innings or MLB.TV, they would see messages saying the games are blacked out. The result is that a fan on the outskirts of a local market may be prevented from seeing every game of the local team's season, no matter how much money he spends on premium packages, because of a poorly applied broadcast map.

MLB also has contractual agreements with networks to show only one Saturday afternoon and Sunday evening game, employing a nationwide blackout of all other games.

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[4] Tom Van Riper, *The NFL's TV Bounty*, FORBES, Sept. 8, 2011, *available at* http://www.forbes.com/sites/tomvanriper/2011/09/08/the-nfls-tv-bounty/.

[5] Major League Baseball Subscription Access FAQ, http://mlb.mlb.com/mlb/help/faq_subscriptions.jsp#q10 (last visited Feb. 8, 2012).

[6] Ferd Lewis, *Isle Giants Fans Tagged Out by MLB TV Nonsense*, HONOLULU STAR-ADVERTISER, Apr. 21, 2011, *available at* http://www.staradvertiser.com/sports/ferdswords/20110421_Isle_Giants_fans_tagged_out_by_MLB_TV_nonsensn.html; Beth Bragg, *Cable TV Squabble Puts M's Fans in Pickle*, ANCHORAGE DAILY NEWS, Jan. 13, 2012, *available at* http://www.adn.com/2012/01/13/2262760/cable-tv-squabble-puts-ms-fans.html.

[7] Jeff Passan, *Left in the Dark*, YAHOO! SPORTS, June 19, 2006, *available at* http://sports.yahoo.com/mlb/news?slug=jp-blackouts061906.

Again, these blackouts extend to premium packages like Extra Innings and MLB.TV. We urge the FCC to examine whether these blackout policies serve the public interest and, if they do not, to work with the league to eliminate these blackouts.

Although league-imposed blackout policies like those of the NFL and MLB are harmful to fans, they are not the only cause of blackouts and consumer frustration. Recently, consumers have been the victims of contract disputes between television providers and networks over the fees paid for retransmission of the networks' content. When these parties cannot reach an agreement, the result is usually a blackout of the channel for an indefinite period of time.

These dispute-related blackouts occur far too often. A 2010 dispute between Dish Network and FOX resulted in the blackout of 19 regional sports networks, and left fans unable to watch the Los Angeles Dodgers or Los Angeles Angels of Anaheim.[8] A dispute in 2002, between Cablevision and Yankees Entertainment and Sports (YES) Network, resulted in the blackout of the channel for the entire year, preventing Cablevision customers from watching any New York Yankees games on YES. And since January 1, 2012, a dispute between Time Warner Cable and Madison Square Garden Network (MSG) has resulted in an ongoing blackout of New York Knicks, New York Rangers, New York Islanders, Buffalo Sabres, and New Jersey Devils games for Time Warner Cable customers.[9]

Even more aggravating to fans is that these disputes often occur during leagues' postseasons, inconveniencing even casual fans who only tune in for the playoffs. A recent dispute between DirecTV and Sunbeam Television Corporation resulted in the blackout of the NFL divisional playoff between the New York Giants and Green Bay Packers and threatened to blackout the Super Bowl for DirecTV customers in Boston and Miami.[10] A 2010 dispute between Cablevision and FOX left Cablevision customers in Connecticut, New York, and New Jersey unable to watch the opening of the National League Championship Series.[11]

In all of these disputes, the fans are the unwilling victims. Consumers pay a set monthly fee for their cable or satellite service; it is unfair and unconscionable that they should experience service blackouts because their service provider and a network cannot come to an agreement. Last year the FCC published a Notice of Proposed Rulemaking (NPRM) regarding retransmission. We strongly encourage the FCC to give serious consideration to the harm that fans suffer when companies cannot reach agreement on retransmission fees and to consider implementing rules that protect fans from being a casualty of these disputes, such as by prohibiting the blackout of live sporting events during a retransmission dispute.

Sports are an important part of American culture and a multibillion dollar industry. When sporting events are blacked out, whether due to league policy, contract dispute, or the sports

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[8] Samantha Gross, *Fox Blackout Prevents MLB Playoff Broadcasts for 3 Million Cablevision Customers*, HUFFINGTON POST, Oct. 16, 2010, *available at* http://www.huffingtonpost.com/2010/10/16/fox-blackout-may-prevent-_n_765270.html.

[9] Christopher S. Stewart, *No Sign of Break in MSG-Time Warner Blackout*, WALL STREET J., Jan. 3, 2012, *available at* http://online.wsj.com/article/SB10001424052970203462304577136731210038376.html.

[10] Shaheen: TV Channel Contract Dispute Must End Before Super Bowl (Jan. 25, 2012), *available at* http://www.shaheen.senate.gov/news/press/release/?id=4fafe7d6-dba5-4433-b218-0e22ece013fb.

[11] Gross, *supra* note 8.

blackout rule, fans are the losers. We urge the FCC to take a broad look at sports blackouts and to consider comprehensive reform that ensures fans' access to sports programming.

Sincerely,

Senator Richard Blumenthal

Senator Sherrod Brown

Senator Tom Harkin

Senator Frank Lautenberg

Senator Debbie Stabenow