



Federal Communications Commission
Office of Legislative Affairs
Washington, D.C. 20554

December 22, 2014

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy:

Enclosed please find the responses to the Questions for the Record submitted for William T. Lake regarding his appearance before the Committee on the Judiciary on December 4, 2014, at its hearing entitled, "The FANS Act: Are Sports Blackouts and Antitrust Exemptions Harming Fans, Consumers, and the Games Themselves?"

If I can be of further assistance, please have your staff contact me at (202) 418-0095.

Sincerely,

A handwritten signature in blue ink, reading "Sara W. Morris".

Sara W. Morris
Director

Enclosure

Senator Grassley
Questions for the Record
Hearing on “The FANS Act: Are Sports Blackouts and Antitrust Exemptions Harming
Fans, Consumers, and the Games Themselves?”
December 10, 2014

William Lake
Chief, Media Bureau
Federal Communications Commission

1. In your written testimony, it seems that both you and the NFL cite some of the exact same data, but rely on it to reach diametrically opposed conclusions. Specifically, you note that in 1975 almost 60 percent of NFL games were blacked out because they failed to sell out, while last year only two of the 256 games were blacked out. You used that data to suggest that the blackout rules are no longer necessary. The NFL, on the other hand, cites the same data, but relies on it as evidence that the current policies are working. It seems to me, therefore, that it’s a question of whether there is a causal connection between the current policies and the decrease in blackouts, as the NFL argues, or if it’s merely a correlation, as you seem to suggest.
 - a. Please address the conclusion reached by the NFL: specifically, if there were only two blackouts last year, then why should we upset the policy that appears to be working?

RESPONSE: The Commission’s decision has no impact on the NFL’s ability to continue to have its blackout policy if it chooses to do so. When the Commission adopted the sports blackout rules forty years ago, it took the underlying NFL blackout policy as a given and sought to protect the ability of viewers to see NFL games on over-the-air TV by prohibiting multichannel video programming distributors from importing a distant TV broadcast signal into a local market if the NFL’s policy required the local TV station to black out the game on its station. The Commission’s concern then was that such importation of a distant signal might lead the league to decline to authorize the distant station to carry its games. In its recent action, the Commission found that marketplace changes had eliminated that justification for our rules. As Chairman Wheeler noted in September, “we at the FCC shouldn’t be complicit in preventing sports fans from watching their favorite teams on TV.” Tom Wheeler (September 9, 2014) *Updating Old Policies; Pioneering New Ones* [Retrieved at <http://www.fcc.gov/blog/updating-old-policies-pioneering-new-ones>]

The Commission has an obligation to ensure that the rules on its books are in the public interest. After careful consideration of all of the issues raised, the Commission decided unanimously that its sports blackout rules were no longer justified. The analysis in coming to that decision evaluated the issue that you raise. The popularity of the NFL has substantially increased in the four decades since the rule was first adopted, which translates into more sold out games and fewer blackouts. Additionally, there was little

evidence in the record– or justification by the NFL or broadcasters – that relaxation of the NFL blackout policy in 2012 had any significant impact on the number of blacked out games or that the decrease in blacked out games was due to the NFL’s blackout policies or the FCC’s rules. *See Sports Blackout Rules Report and Order*, 29 FCC Rcd 12053, at ¶ 19 (Sept. 30, 2014).

2. As we know, the legislation conditions the sports leagues’ antitrust exemptions – and therefore, some argue, their viability – on the elimination of blackout requirements during contract negotiations. This raises a number of complicated issues regarding the current contracts, their duration, and whether it’s feasible for the parties to alter their terms. And for future negotiations, it raises the question of whether or not the leagues have privity of contract with all of the relevant parties and affiliates.
 - a. In your view, would the legislation require the parties to open up and alter the terms of any existing contracts?
 - b. And for future contracts, in your view does the legislation impose a duty or requirement on the leagues that they are unable to enforce due to lack of privity with a third party?

RESPONSE: As noted in my written statement, the Commission does not take a position on the FANS Act and whether Congress should modify or eliminate the existing antitrust exemptions that allow the leagues to have sports blackout policies. The questions posed appear to be outside of the purview of the FCC.