DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 1, 10, 11, 12, 13, 14, and 15

[Docket No. USCG–2014–0016]

Policy Implementing the Standards of Training, Certification, and Watchkeeping

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the availability of five Navigation and Vessel Inspection Circulars (NVICs), which are the third set of a series of NVICs to implement the Final Rule that aligned Coast Guard regulations with amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers and made changes to national endorsements. These NVICs will provide guidance to mariners concerning new regulations governing merchant mariner certificates and endorsements to Merchant Mariner Credentials (MMC).

DATES: These NVICs are effective on October 24, 2014.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice, call or email Luke B. Harden, Mariner Credentialing Program Policy Division (CG–CVC–4), U.S. Coast Guard; telephone 202–372–2357, or *MMCPolicy@uscg.mil.* If you have questions on viewing material in the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Viewing Documents

The five NVICs listed below are available and can be viewed by going to *http://www.uscg.mil/nmc* and clicking on ''STCW Rule Information,'' then click on ''STCW Rule NVICs.''

Discussion

On December 24, 2014, the Coast Guard published a Final Rule in the **Federal Register** (78 FR 77796) amending Title 46, Code of Federal Regulations, to implement the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, as amended 1978 (STCW Convention), including the 2010 amendments to the STCW Convention, and the Seafarers' Training, Certification and Watchkeeping Code. The final rule also made changes to reorganize, clarify, and update regulations for credentialing merchant mariners. In the future, the Coast Guard will issue additional NVICs to provide further guidance on the implementation of the new regulations regarding endorsements to Merchant Mariner Credentials (MMCs). The five NVICs listed below represent the third phase of this effort:

1. Guidelines for Qualification for High-Speed Craft Type-Rating Endorsements (NVIC 20–14). This NVIC describes policy for merchant mariners to qualify for and renew endorsements for service on vessels designed and operated in accordance with the International Code of Safety for High-Speed Craft, 2000.

2. Guidelines on Qualification for Endorsements for Vessel Security Officers, Vessel Personnel with Designated Security Duties, and Security Awareness (NVIC 21–14). This NVIC describes policy for merchant mariners to qualify for and renew STCW endorsements for Vessel Security Officers, Vessel Personnel with Designated Security Duties, and for Security Awareness.

3. Guidelines on Qualification for STCW Endorsements for Officers and Ratings on Oil, Chemical, and Liquefied Gas Tank Vessels (NVIC 22–14). This NVIC describes policy for merchant mariners to qualify for and renew STCW endorsements for service on tank vessels.

4. Guidelines on Qualification for STCW Endorsements as Electro-Technical Officer on Vessels Powered by Main Propulsion Machinery of 750 kW/1,000 HP or More (NVIC 23–14). This NVIC describes policy for merchant mariners to qualify for and renew endorsements as Electro-Technical Officer on vessels powered by main propulsion machinery of 750 kW/1,000 HP or more.

5. Guidelines on Qualification for STCW Endorsements as Electro-Technical Rating on Vessels Powered by Main Propulsion Machinery of 750 kW/1,000 HP or More(NVIC 24–14). This NVIC describes policy for merchant mariners to qualify for and renew endorsements as Electro-Technical Rating on vessels powered by main propulsion machinery of 750 kW/1,000 HP or more.

Authority

This notice is issued under the authority of 5 U.S.C. 552(a).

Dated: October 10, 2014.

J.C. Burton,

Captain, U.S. Coast Guard, Director, Inspection & Compliance.

[FR Doc. 2014–24869 Filed 10–23–14; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 12–3; FCC 14–141]

Sports Blackout Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission eliminates the sports blackout rules for cable operators, satellite carriers, and open video systems. Elimination of the sports blackout rules will remove unnecessary and outdated regulations and remove regulatory reinforcement (and the Commission's implicit endorsement) of the NFL's private blackout policy, which deprives consumers of the ability to view on television the teams that they have subsidized through publicly-funded stadiums and other tax benefits. Elimination of the sports blackout rules may not end all sports blackouts. To the extent that the NFL (or any other sports league) chooses to continue its private blackout policy, it will no longer entitled to the protections of the sports blackout rules. Instead, it must rely on the same avenues available to any other entity that wishes to protect its distribution rights in the private marketplace.

DATES: Effective November 24, 2014.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Kathy Berthot, *Kathy.Berthot@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–7454.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* FCC 14–141, adopted and released on September 30, 2014. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th

Street SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

This document contains no new or modified information collection requirements.

Summary of the Report and Order

I. Introduction

1. In this *Report and Order*, we eliminate our sports blackout rules, which prohibit cable operators, satellite carriers, and open video systems from retransmitting, within a protected local blackout zone, the signal of a distant broadcast station carrying a sporting event if the event is not available live on a local television broadcast station. The sports blackout rules have reinforced the sports leagues' private blackout policies since 1975, with the objective of helping to ensure that sports telecasts are available to the public. The sports industry has evolved dramatically over the last 40 years, however. The sports blackout rules have little relevance today for sports other than professional football. With respect to professional football, television revenues have replaced gate receipts as the primary source of revenue for NFL teams. For this reason, among others, we conclude that the sports blackout rules are no longer needed to ensure that sports programming is widely available to television viewers.

2. Eliminating the sports blackout rules will also remove unnecessary and outdated regulations. Additionally, eliminating the rules will remove regulatory reinforcement (and the FCC's implicit endorsement) of the NFL's private blackout policy, which prevents consumers—many of whom cannot attend games because they are elderly or disabled or are fans who have been priced out of attending games due to increased costs for tickets, parking, and concessions, yet have subsidized NFL teams with their tax dollars through publicly-financed stadiums and other tax benefits—from watching their teams' games on local television. For these reasons, we find that eliminating our sports blackout rules will serve the public interest. We acknowledge that elimination of our sports blackout rules may not end local blackouts of sports events because the NFL and other sports leagues may choose to continue their private blackout policies. Nevertheless, to the extent that the NFL or any other sports league decides to continue its blackout policies, it will no longer be entitled to additional protections under our sports blackout rules, but instead must rely on the same processes available to any other entities that wish to protect their distribution rights in the private marketplace.

II. Background

3. In the *Notice of Proposed Rulemaking* (*NPRM*), the Commission provided extensive background on the history of the sports blackout rules, which we incorporate by reference and do not repeat here. The sports blackout rules bar cable operators, satellite carriers, and open video systems from retransmitting, within a 35-mile zone of protection, a distant broadcast station carrying a sports event that is not available live on a television broadcast station licensed to the community in which the event is taking place. The Commission first adopted a sports blackout rule for cable operators in 1975, when game ticket sales were the primary source of revenue for sports leagues. This rule was intended 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 television viewers. The Commission's objective in adopting the cable sports blackout rule was not to ensure the profitability of organized sports, but rather to ensure the overall availability of sports telecasts to the general public. Indeed, in 1975, had sports teams refused to allow sports events to be televised on distant broadcast stations, their games likely would not have been televised at all or perhaps only carried on cable systems to which few Americans subscribed. At the direction of Congress, the Commission later applied the cable sports blackout rule to open video systems and then to satellite carriers to provide parity between cable and newer video distributors.

4. Sports leagues' blackout policies determine which games are blacked out on local television stations. These policies are implemented primarily through contracts negotiated between the leagues or individual teams that hold the distribution rights to the games and the entities to which they grant those rights, including television networks, local television broadcast stations, Regional Sports Networks (RSNs), and multichannel video programming distributors (MVPDs). The Commission's rules supplement these contractual relationships by barring MVPDs from retransmitting, within the local blackout zone, games that the sports leagues or individual teams require local television stations to black out.

5. In November 2011, the Sports Fan Coalition, Inc., National Consumers League, Public Knowledge, League of Fans, and Media Access Project filed a joint Petition for Rulemaking arguing that the Commission should no longer facilitate the sports leagues' ''anti-consumer'' blackout policies and urging the Commission to eliminate the sports blackout rules. On January 12, 2012, the Media Bureau issued a Public Notice seeking comment on the Petition. The record compiled in response to the Public Notice suggested that, given the dramatic changes in the sports industry in the 40 years since the sports blackout rules were originally adopted, the sports blackout rules may no longer be necessary to ensure that sports programming is widely available to television viewers and, in fact, may be reinforcing a private policy that promotes just the opposite (i.e., more restrictive access for consumers to televised games with little, if any, countervailing public interest benefit). On December 18, 2013, the Commission released an *NPRM* proposing to eliminate the sports blackout rules. The *NPRM* sought comment on 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. It tentatively concluded that the Commission has the authority to repeal the cable sports blackout rule and sought comment on whether the Commission also has the authority to repeal the sports blackout rules for satellite and OVS. In addition, the *NPRM* requested comment on whether the economic rationale underlying the sports blackout rules remains valid. Finally, the *NPRM* sought comment on the potential benefits and harms of eliminating the rules on interested parties, including sports leagues, broadcasters, and consumers.

III. Discussion

6. For the reasons set forth below, we eliminate the sports blackout rules. First, we conclude that the Commission has the authority to eliminate the sports blackout rules for cable operators, satellite carriers, and open video systems. Second, we review the changes in the sports industry since the cable sports blackout rule was first adopted nearly 40 years ago and conclude that, in light of these substantial changes, the sports blackout rules are no longer

needed to ensure that sports programming is widely available to television viewers. We further conclude that elimination of the sports blackout rules will serve the public interest by removing unnecessary regulation and removing regulatory reinforcement of the NFL's blackout policy, which prevents many consumers who have subsidized the NFL through publicly-funded stadiums and other tax benefits from watching locally blacked out games. To the extent that the NFL (or any other sports league) chooses to continue its blackout policies through private contractual arrangements, it will no longer be entitled to additional protections under our sports blackout rules, but instead must rely on the same processes available to any other entities that wish to protect their distribution rights in the private marketplace. Finally, we conclude that repeal of the sports blackout rules will not adversely impact broadcasters, consumers, or local businesses.

A. Authority To Eliminate Sports Blackout Rules

7. We conclude that the Commission has the authority to eliminate the sports blackout rules for cable operators, satellite carriers, and open video systems. While there is no statutory provision mandating that the Commission adopt a sports blackout rule for cable, the Commission premised its adoption of the cable sports blackout rule in large part on the policy established by Congress in the Sports Broadcasting Act of 1961, 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. Subsequent legislation directed the Commission to apply the cable sports blackout rule to open video services and satellite television operators. Thus, 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 CFR 76.67).'' Similarly, Section 339(b) of the 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.''

8. We find that elimination of the cable sports blackout rule is authorized under the Commission's general rulemaking power, which grants the Commission the authority to revisit its rules and modify or repeal them if it finds that such action is warranted. As discussed above, Congress never required the Commission to adopt a sports blackout rule for cable. Further, when it directed the Commission to apply the sports blackout protection in 47 CFR 76.67 to DBS and OVS, Congress left intact the Commission's general rulemaking authority with respect to the cable sports blackout rule, including the authority to modify or repeal this rule should it find that such action is appropriate. We also note that no commenter disputes our authority to eliminate the cable sports blackout rule.

9. Additionally, we conclude that we have the authority to eliminate the sports blackout rules for DBS and OVS. We find unpersuasive assertions in the record that the Commission may not eliminate the sports blackout rules for DBS and OVS absent congressional repeal of Sections 339(b) and 653(b)(1)(D) of the Act. The NFL argues that, since these statutory provisions provide that the Commission ''shall'' apply the cable sports blackout rule to DBS and OVS, the Commission has no discretion to eliminate the sports blackout rules for DBS and OVS. We disagree. In enacting Sections 339(b) and 653(b)(1)(D), Congress did not enact sports blackout protection for DBS or OVS but rather directed the Commission to apply to DBS and OVS the same sports blackout protection that the Commission applied to cable. Thus, the use of ''shall'' in Sections 339(b) and 653(b)(1)(D) merely instructed the Commission to apply to DBS and OVS the same sports blackout protection that is applicable to cable. The Commission discharged its statutory obligation through adoption of sports blackout rules for OVS in 1996 (47 CFR 76.1506(m)) and for DBS in 2000 (47 CFR 76.127). Nowhere did Congress require the Commission to maintain these rules in perpetuity, and Congress was aware that the Commission has general rulemaking power to revisit its rules and modify or repeal them if it finds that such action is appropriate. Sections 339(b) and 653(b)(1)(D) do not limit the Commission's authority to repeal or modify its cable sports blackout rule at some future time, nor is there any indication in the legislative history that Congress intended to withdraw this authority. Accordingly, we conclude that, by expressly tying these statutory provisions to the cable sports blackout rule, Congress demonstrated its intent that the Commission accord the same regulatory treatment to DBS and OVS as it does to cable with respect to sports blackouts, including modification or repeal of the sports blackout rules for these services if it determines that modification or repeal of the cable sports blackout rule is warranted.

10. The legislative history of the Satellite Home Viewer Improvement Act of 1999 supports this conclusion. The legislative history makes clear that Congress sought to place satellite carriers on an equal footing with cable operators with respect to the availability of broadcast programming. Specifically, the legislative history indicates that the sports blackout rules for satellite carriers ''should be as similar as possible to that applicable to cable services.'' Congress's clear intent to create regulatory parity between cable and satellite, and its preservation of Commission authority to modify or repeal the cable sports blackout rule, thus further support our interpretation that Congress intended that the Commission would retain its authority to repeal the sports blackout rules for OVS and DBS if necessary to maintain regulatory parity with cable in the future.

11. We reject the Baseball Commissioner's assertion that the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA) evidences Congress's intent that the Commission do no more than provide to Congress ''recommendations'' as to whether the sports blackout rules for DBS and OVS should be altered, and that any changes based on those recommendations were to be made by Congress. 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.'' SHVERA further directed the Commission to ''include such recommendations for changes in any statutory provisions relating to such rules as the Commission deems appropriate.'' Contrary to the Baseball

Commissioner's suggestion, we do not believe this latter directive can reasonably be interpreted to reflect an intent on the part of Congress to limit the Commission only to making recommendations about the sports blackout rules for DBS and OVS. As noted above, the purpose of the SHVERA inquiry and report was to evaluate the impact of the specified rules on competition in the MVPD market, including their impact on the ability of rural cable operators to compete with DBS in the provision of digital broadcast television signals. If Congress had intended to suspend or limit the Commission's general rulemaking powers under the Communications Act with respect to the sports blackout rules for DBS and OVS, Congress would have done so rather than direct that ''such report shall include such recommendations for changes in any statutory provisions relating to such rules as the Commission deems appropriate.'' There is nothing in the SHVERA directive that indicates that Congress's objective was to preclude the Commission from making any modifications to the sports blackout and other listed rules. Indeed, given the inclusion of retransmission consent in the relevant SHVERA provision, the Baseball Commissioner's argument, if accepted, would lead to the conclusion that Congress barred the Commission revising any of its rules pertaining to retransmission consent. We reject this position, which has no basis in the text of the statute. Rather, we think the more reasonable interpretation is that Congress simply intended that the Commission provide recommendations for any legislative changes that it deemed necessary or appropriate to address the impact of the specified rules on competition among MVPDs.

B. Sports Blackout Rules No Longer Needed To Ensure That Sports Telecasts Are Widely Available to the Public

12. Our policy inquiry begins with an evaluation of whether the sports blackout rules are still needed to achieve the objective of ensuring the wide availability of sporting events on television in light of the dramatic changes that have occurred in the sports industry over the last 40 years. As an initial matter, we find that the sports blackout rules have little relevance today for sports other than professional football. We therefore focus our analysis on whether the sports blackout rules remain necessary to preserve the overall availability to television viewers of NFL games. We conclude that sports blackout rules are no longer needed to serve that purpose. We find that, during the past 40 years, television revenues have replaced gate receipts as the principal source of revenue for NFL teams and there has been a substantial decline in the number of NFL games blacked out due to failure to sell out. We further find that the loss to consumers of their ability to view the game on television when an NFL game is blacked out exceeds any gain in gate receipts and other revenue that may accrue to the NFL as a result of a blackout. In addition, the record demonstrates that changes in the industry make it unlikely that the NFL would move its games to pay TV as a result of the elimination of the sports blackout rules, notwithstanding the NFL's claims to the contrary. Given that the goal of the rules was not to protect the profitability of sports leagues but rather to ensure that sports programming is widely available to television viewers, we believe that all of these factors weigh in favor of eliminating the sports blackout rules.

i. Primary Relevance to Professional Football

13. The record confirms that the sports blackout rules are no longer relevant for sports other than professional football. As explained in the *NPRM,* in professional sports leagues other than the NFL, individual teams, rather than the league, hold and sell the distribution rights for all or most of their games, both home and away games, in their home markets. Thus, each individual team is in control of deciding how many of its home games are telecast live in its home market, and individual teams have generally chosen to telecast all or most of their home games in the team's local market. Moreover, most individual teams distribute the majority of their televised games today through RSNs rather than over-the-air television stations. The *NPRM* accordingly sought comment on whether the sports blackout rules are still relevant for these other professional sports leagues. The *NPRM* also requested specific data on the extent to which games of other professional sports leagues, as well as other professional, collegiate, and high school sports events, are blacked out locally pursuant to the Commission's sports blackout rules and the reasons for any such blackouts (i.e., whether they are blacked out due to failure to sell out or for some other reason). No commenter asserts, or provides supporting data showing, that sports events other than NFL games are blacked out locally today pursuant to the Commission's sports blackout rules. In the absence of any such assertions or data, we conclude that the sports blackout rules are no longer relevant for sports other than professional football. Accordingly, we focus our analysis herein on whether the sports blackout rules are still needed to ensure the overall availability to television viewers of NFL games.

ii. NFL Gate Receipts and Other Revenues

14. The substantial shift in importance of gate receipts vis-à-vis television and other revenues for NFL clubs over the past 40 years supports our conclusion that the sports blackout rules are no longer needed to meet their underlying policy objective of ensuring that sports programming is widely available to the viewing public. 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.'' The Commission acknowledged that ''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'' and found that ''a 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.'' Gate receipts, however, are no longer the primary source of revenue for the NFL. According to the NFL, gate receipts account for approximately 25 percent of NFL team revenue today. Other estimates suggest that gate receipts account for closer to 20 percent of NFL revenue. In either event, gate receipts are now dwarfed by television revenues, which have grown exponentially over the past four decades. In 1975, annual television revenues for the NFL were estimated at $55 million (which in today's dollars would be approximately $242 million). In 2011, the NFL entered into long-term contracts totaling an estimated $27.6 billion with CBS, Fox, and NBC to air NFL games from 2014 to 2022. The NFL also has an eight-year, $15 billion deal with ESPN for the rights to Monday Night Football, which extends from 2014 to 2021. Additionally, the NFL's four-year deal with DIRECTV for NFL Sunday Ticket, which runs through 2014, is reportedly worth an estimated $4.1 billion. Further, the NFL recently entered into a one-year contract with CBS to air eight Thursday Night Football games, which is estimated to be worth $275 million or $34.4 million per game. The NFL is expected to collect an estimated $6 billion per year in total television revenues beginning in 2014. Other significant sources of revenue for the NFL include sponsorships, which

totaled an estimated $1.07 billion in 2013, merchandising and licensing, which are estimated at around $1 billion per year, and in-stadium revenues such as concessions and parking. Total NFL revenues reportedly topped $10 billion for the first time during the 2013 season. The NFL is the most lucrative sports league in the world, with each of its 32 teams worth on average $1.17 billion.

15. We find that the replacement of television revenues for gate receipts as the main source of revenue for NFL clubs creates a powerful economic incentive for the industry to make games widely available to television viewers even in the absence of the blackout rules. This change in the NFL's economic structure thus supports our conclusion that the sports blackout rules are no longer necessary to promote attendance at games in order to ensure that sports programming is widely available to television viewers. We are not persuaded by NAB's argument that the Commission should not consider gate receipts or the economic condition of the sports leagues as part of our analysis of whether to eliminate the sports blackout rules. According to NAB, it is misguided to base possible elimination of the sports blackout rules on changing economic conditions. Rather, it maintains that, if the NFL believes that it is economically desirable to maintain a policy of blackouts in local markets when games do not sell out, the Commission should not substitute its judgment for that of the NFL. However, as we stated in the *NPRM,* ''[t]he objective of the sports blackout rules is not to ensure the profitability or financial viability of sports leagues, but rather to ensure that sports programming is widely available to television viewers. Thus, we are interested in gate receipts and other revenues only to the extent that such revenues are relevant to this objective.'' We conclude that it is relevant to our analysis of the continued need for the sports blackout rules that television revenues have supplanted gate receipts as NFL clubs' principal source of revenue and that total revenues for the NFL have skyrocketed since 1975.

iii. Reduction in NFL Blackouts

16. We also conclude that the substantial decline in the number of NFL games blacked out locally over the past 40 years supports a finding that the sports blackout rules are no longer needed to ensure that sports programming is widely available to television viewers. The record shows that the NFL's rise in popularity since 1975 has made it easier for teams to sell out games than it was at the time the sports blackout rules were first adopted. In 1975, the year the Commission adopted the cable sports blackout rule, 59 percent of regular season NFL games were blacked out locally due to failure to sell out. As the NFL notes, ''NFL football over the past few decades has become the most popular, most watched professional sport in America.'' The Sports Economists explain that televising NFL games has substantially increased the fan base for professional football, which in turn has allowed teams to sell more tickets. Indeed, the immense popularity of NFL football has ensured that the vast majority of NFL teams sell out all of their games every season. Thus, the number of regular season NFL games blacked out has declined substantially since 1975. Between 1975 and 2013, the percentage of regular season NFL games blacked out dropped by more than 58 percent. During the 2013 NFL season, only two (0.78 percent) of 256 regular season NFL games were blacked out. Total attendance at NFL games in 1975 was approximately 10.2 million. In 2013, total NFL attendance rose for the third straight year to approximately 17.3 million. In addition, blackouts of NFL games have been limited in recent years to a few markets.

17. The NFL asserts that one reason for the ''success'' of its blackout policy is that ''the League has adjusted its policy in recent years to give teams more flexibility as they seek to strike the right balance between promoting the in-stadium experience and engaging fans over television.'' There is little evidence, however, that the NFL's relaxation of its blackout policy in 2012 has had a significant impact on the number of NFL games blacked out during the past two NFL seasons. Moreover, the NFL fails to explain why it believes that its relaxed policy favors retention of the sports blackout rules. Under the revised blackout policy, NFL teams have the option of deciding at the beginning of each season to reduce the percentage of tickets that must be sold at least 72 hours prior to the game in order to avoid a blackout to anywhere between 85 and 100 percent and adhering to that alternative blackout threshold throughout the season. Few NFL teams have taken advantage of this policy because, if the team's ticket sales exceed the benchmark threshold set by the team at the beginning of the season, the team must share a higher percentage of the revenue from those ticket sales than usual with the visiting team. The total number of NFL games blacked out dropped by only one game between 2011 and 2012, the first year the revised blackout policy was in effect. One of the teams that elected to lower its benchmark threshold to 85 percent, the Tampa Bay Buccaneers, actually saw an increase in the number of games blacked out from 2011 to 2012; the team took other measures in 2013 to avoid blackouts altogether. In contrast, three teams that experienced blackouts in both 2011 and 2012—the Cincinnati Bengals, Buffalo Bills, and San Diego Chargers—all reduced their number of blackouts in 2013, despite electing not to lower their benchmark thresholds. Thus, we do not believe that the NFL's recent relaxation of its blackout policy favors retention of the Commission's sports blackout rules.

18. We further note that individual NFL clubs have used a variety of other measures in recent years to avoid blackouts, which suggest that they value television revenues more than selling out stadiums. Such measures have included removing seats or covering seats with tarps to reduce stadium capacity; reducing ticket prices; and buying tickets themselves at a discounted price. In addition, local television network affiliates that would otherwise be airing these games and other local businesses that would benefit from the games being televised have purchased outstanding tickets to help avert blackouts. The fact that many NFL clubs, as well as local network affiliates and other local businesses, choose to take such measures to avoid blackouts, even when it entails an economic cost, reflects the industry trend toward maximizing television revenues above other considerations, including selling out stadiums.

19. We conclude that the substantial decrease in the number of NFL games blacked out locally since 1975 demonstrates that the sports blackout rules are no longer necessary to ensure the wide availability of sports telecasts to the general public and thus weighs in favor of eliminating the sports blackout rules. At the time that the sports blackout rules were first adopted, nearly 60 percent of NFL games were blacked out locally due to failure to sell out. Since that time, the popularity of NFL football has soared, making it far easier for most teams to sell out all of their games and making blackouts of NFL games increasingly rare. Additionally, the measures taken by NFL teams in recent years to prevent blackouts indicate that these teams are more concerned with television revenues than with selling out every seat in the stadium. NAB argues that the fact that the 2013 NFL season featured the fewest local blackouts since the league's inception ''demonstrates that the

existing blackout policies . . . are working well and should not be upset.'' We find this argument unpersuasive. NAB offers no support for its suggestion that the 2013 season featured the fewest local blackouts as a result of the NFL's blackout policies, much less the Commission's rules. Moreover, even the NFL acknowledges that there are a number of factors apart from its blackout policies—such as stadium capacity, weather, and team performance—that determine whether a team sells out a particular home game. Thus, we cannot conclude that the very low number of blackouts during the 2013 season is attributable to the NFL's blackout policies or that it establishes that the sports blackout rules should be retained. Rather, if anything, the very low number of blackouts in 2013 seems to suggest that stadium revenues that once were preserved by blackouts are less significant than the television revenues the NFL enjoys by preventing blackouts.

iv. Impact of Blackouts on NFL Attendance and Gate Receipts

20. As reviewed above, the Commission adopted the sports blackout rules to promote the availability of sports programming to television viewers, not to boost sports leagues' financial bottom line. Nevertheless, based on the record before us, we conclude that the loss to consumers of their ability to view an NFL game that has been blacked out locally exceeds any gains in gate receipts and other in-stadium revenues that may accrue to the NFL as a result of blacking out the game. In the *NPRM,* we sought comment on the conclusion of the Sports Economists that, 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, there is no evidence that local blackouts of NFL games significantly affect either ticket sales or no-shows at those games. The NFL disputes this conclusion, arguing that recent empirical research demonstrates that the sports blackout rules play a vital role in ensuring that professional sports games reach near-capacity attendance and that blackouts are associated with ''a statistically significant increase in attendance and decrease in 'no-shows.' '' Specifically, the NFL's economist expert, Dr. Singer, asserts that a 2000 study by Putsis and Sen demonstrates that the NFL's blackout policy has a positive effect on attendance at NFL games. The Putsis and Sen study examined the impact of blackouts on attendance at NFL games using data on economic, demographic, team, and game specific variables for the eight NFL teams that experienced blackouts of at least one home game during the 1996–1997 NFL season. The study found that, for these eight teams, blackouts were associated with an average maximum increase in overall tickets sold per game of 11,310, an average maximum decrease in no-shows per game of 4,959, and an average maximum per game increase in revenues of $414,336 per team.

21. We acknowledge that the Putsis and Sen study indicates that blackouts have a positive impact on gate receipts and other in-stadium revenues. As the Sports Economists observe, however, Dr. Singer focuses only on the statistical significance of this study and fails to consider its economic significance. In this regard, Putsis and Sen also find that, when viewed in the broader context of the societal and economic loss due to the game not being broadcast in the local area, the gain to the NFL in on-site stadium revenue due to a blackout (e.g., through additional ticket and concession sales) is small in comparison to the loss to consumers of their ability to view NFL games that have been blacked out locally. Specifically, Putsis and Sen state that ''even if one estimates the maximum potential impact on NFL game day revenue—the welfare loss resulting from the blackouts likely exceeds the loss in NFL revenue. Thus, the imposition of a blackout creates a market failure. . . .'' In other words, as the Sports Economists put it, the added money spent by the few fans ''driven'' to the stadium by a blackout is a gain to the NFL but is not economically significant when compared to the loss of viewer value. The Sports Economists therefore conclude that this study does not provide evidence of an economically significant relationship between attendance and blackouts. We agree. Particularly when considered in relation to the NFL's $6 billion annual television revenues, we cannot conclude based on this study that blackouts have an economically significant impact on attendance at NFL games or gate receipts from those games. Additionally, we cannot conclude based on this study that the positive impact of the sports blackout rule on gate receipts and attendance exceeds the loss of television revenues or the societal loss to consumers of their ability to view locally blacked out NFL games. In any event, the goal of the sports blackout rules is not to protect the profitability of sports leagues but rather to ensure that sports programming is widely available to television viewers.

v. Migration of NFL Games to Pay TV

22. We conclude that elimination of the sports blackout rules is unlikely to reduce the availability of NFL games to free, over-the-air television viewers by leading the NFL to migrate its games to pay TV. As noted above, the NFL's existing contracts with the broadcast networks extend through 2022 so migration of NFL games will not even be an issue until 2023. Dr. Singer asserts that, by spurring attendance at games, the sports blackout rules facilitate the NFL's ''free TV'' model. In the absence of the sports blackout rules, he continues, the NFL would likely be forced to migrate to a ''pay TV'' model in order to preserve its private blackout policy (and thus its ability to control the distribution of its programming). Dr. Singer states that the NFL would seek to preserve its private blackout policy because this policy is profit-maximizing. Migration of NFL games to pay TV, he maintains, would leave consumers who rely solely on over-the-air television unable to view NFL games (i.e., it would reduce the overall availability of sports telecasts to the public).

23. To support his assertions, Dr. Singer states that the NFL's calculus for switching from its ''free TV'' model to pay TV in the absence of the sports blackout rules is as follows: the NFL would switch to pay TV if the value to the NFL of distributing its games via pay TV (i.e., the revenues that the NFL would earn from distributing its games via pay TV) plus the increase in gate revenue from its blackout policy exceeds the value to the NFL of distributing its games via over-the-air television in the absence of the sports blackout rules (*i.e.,* the revenues that the NFL would earn from distributing its games via over-the-air television in the absence of the sports blackout rules). According to Dr. Singer, the value to the NFL of distributing its games via over-the-air television would decrease in the absence of the sports blackout rules because the lack of exclusivity for local broadcasters that would result from elimination of the sports blackout rules would reduce the value of the NFL telecasts to advertisers, which in turn would reduce the value that the networks would pay for rights to NFL games. Dr. Singer also indicates that the NFL's calculus ''assume[s] that no amount of contracting . . . can restore the full value of exclusivity.''

24. Even if we were to assume that elimination of the sports blackout rules will result in the reduction in exclusive distribution rights for some local broadcasters and that no amount of

contracting could restore the full value of exclusivity, it does not follow that it would be more profitable for the NFL to migrate its games to pay TV. It is necessary to consider the magnitude of the reduction in exclusivity and the impact of that reduction on the rights payment that the NFL would receive from broadcasters in the absence of the sports blackout rules. We believe that, if there were any reduction, the magnitude would be small because only a small number of games are blacked out locally today due to failure to sell out. Moreover, both Putsis and Sen and the Sports Economists agree that the increase in gate revenue to the NFL from its blackout policy is small. Under the NFL's calculus, the NFL would not be expected to migrate its games to pay TV unless the NFL could earn almost as much from distributing its games via pay TV as it could from distributing its games via over-the-air television in the absence of the sports blackout rules. Because the record does not show that eliminating the sports blackout rules would have a significant impact on the NFL's over-the-air revenues, and for the reasons provided below, we think that this is highly unlikely.

25. While the NFL currently distributes a limited number of games via pay TV, the fact that it distributes the majority of its games via broadcast television stations (which may be viewed by consumers on free, over-the-air television or on basic MVPD service) indicates that it is more profitable for it to do so. Indeed, we note that NFL games are consistently the highest rated programs on broadcast television. According to a recent NFL press release, average viewership of NFL games on broadcast television has increased 31 percent from 15.5 million in 2003 to 20.3 million in 2013. NFL games accounted for 34 of the 35 most-watched television shows among all programming during the 2013 NFL regular season and 22 of these games were watched by at least 25 million viewers. In addition, NFL games attract the young male demographic highly coveted by advertisers, and most consumers watch NFL games live, which is important to advertisers at a time when many viewers record programs and then skip the commercials when they watch them. The high viewership of NFL games on broadcast television stations (whether viewed by consumers over-the-air or via MVPD service) enables television networks and their local affiliates to command the highest possible advertising rates for spots during NFL games. In contrast, ESPN and NFL Network, the two pay TV networks that currently hold rights to distribute some NFL games, do not attract nearly the same level of viewership as the television networks. In 2013, ESPN's Monday Night Football averaged 13.7 million viewers and NFL Network's Thursday Night Football averaged 8.1 million viewers. ESPN and NFL Network therefore are unable to charge as much as broadcast networks for advertising spots aired during NFL games. Specifically, estimates for a 30-second spot aired during an NFL game on ESPN in 2013 range from $325,000 to $410,000, while estimates for a 30-second spot aired during an NFL game on broadcast television in 2013 range from $593,000 to $628,000. The substantial difference in viewership of NFL games on broadcast television stations and pay TV networks—and the corresponding difference in the advertising rates that broadcast television and pay TV networks charge for spots during NFL games—reflects, among other things, the fact that a significant number of consumers rely exclusively on broadcast television received over the air or subscribe only to basic MVPD service. According to the NFL, approximately 22.4 million households (almost 20 percent of all U.S. households with a television) relied solely on over-the-air broadcasting in 2013. The Commission recently found that, as of July 2012, approximately 11.1 million U.S. households with a television, which represented 9.7 percent of all television households at that time, relied exclusively on over-the-air television. In addition, a recent Media Bureau survey indicates that, as of January 1, 2013, 14 percent of cable subscribers took basic service only. Thus, in order for the NFL to earn almost as much from distributing its games via pay TV as it could from distributing its games via broadcast television stations, a significant percentage of the over-the-air television households would have to switch to pay TV and the households that subscribe only to basic cable service would have to upgrade to a higher tier of pay TV. While Dr. Singer suggests that if the NFL migrated all of its games to pay TV, some over-the-air television households would subscribe to pay TV in order to receive the games, he does not provide any estimate or evidence of the number of over-the-air television households that would switch to pay TV. There is also no evidence in the record as to the number of basic service tier only subscribers that could be expected to upgrade to a higher service tier if the NFL migrated its games to pay TV. Given the immense popularity of NFL football on broadcast television and the significant number of over-the-air television households and households that subscribe only to basic MVPD service, we think that it is highly unlikely that it would be more profitable for the NFL to distribute its games via pay TV than via broadcast television in the absence of the sports blackout rules. Furthermore, we note that the broadcast networks also value NFL programming highly because it provides them a platform to promote their prime-time lineups and boosts their ratings for prime-time and other network programming, which may allow broadcasters to demand higher retransmission consent fees from MVPDs. Thus, the broadcast networks will have a strong incentive to take measures to ensure that the NFL does not migrate its games to pay TV after their current contracts expire in 2022. Accordingly, we conclude that the NFL is unlikely to migrate a substantial number of its games to pay TV as a result of elimination of the sports blackout rules. Ultimately, we believe that the market, rather than the elimination of our sports blackout rules, will determine whether NFL football stays on broadcast television or moves to pay TV.

vi. Erosion of Economic Basis for Sports Blackout Rules

26. As previously discussed, the sports blackout rules were premised on the concern that the potential loss of gate receipts resulting from cable, OVS and satellite system importation of distant stations would lead the NFL and other sports leagues to refuse to sell their rights to sports events to distant stations, thereby substantially reducing the overall availability of sports programming to television viewers. We conclude that this concern is no longer valid in today's marketplace. As discussed above, blackouts are no longer relevant for sports other than professional football. With respect to NFL football, television revenues have become the dominant share of NFL revenues with a corresponding decrease in gate receipts as a proportion of overall revenues. Moreover, the number of sell-outs and total attendance at NFL games has increased substantially since 1975, reflecting an increase in the popularity of NFL games. These trends undermine the notion that the NFL would find it profitable to significantly restrict television broadcasts of its games to protect gate receipts and in-stadium revenues. Additionally, the record shows that the loss to consumers of their ability to view a game on local television when an NFL game is blacked

out exceeds any gain to the NFL in gate receipts and other in-stadium revenue as a result of a blackout and that the NFL is unlikely to migrate its games to pay TV as a result of elimination of the sports blackout rules because it would not be profitable for it to do so. Accordingly, based on all of these factors, we conclude that the economic considerations underlying the sports blackout rules are no longer valid and, therefore, the sports blackout rules are no longer needed to ensure that NFL games are widely available to the viewing public.

vii. Elimination of the Sports Blackout Rules

27. As explained in detail above, the sports blackout rules are no longer necessary to ensure the overall availability of NFL games to television viewers. Accordingly, we conclude that the sports blackout rules are outdated and should be eliminated. We recognize that eliminating our sports blackout rules is unlikely to end all sports blackouts. The NFL has stated that it most likely will continue its underlying blackout policy. Thus, consumers may still be unable to view locally blacked out NFL games despite repeal of our rules. Nevertheless, we conclude that it will serve the public interest to eliminate regulations that are no longer needed to serve their original purpose of ensuring that sports telecasts are widely available to the viewing public. If regulations are no longer serving a public interest purpose, they should be eliminated.

28. We also find that the public interest will be served by removing regulatory reinforcement of the NFL's blackout policy. With annual revenues totaling around $10 billion, the NFL is the most lucrative sports league in the world. In addition, most NFL teams are heavily subsidized by consumers through publicly funded stadiums and other tax benefits. Yet consumers—including elderly and disabled sports fans who are physically unable to attend games in person and sports fans who cannot afford to attend games due to high ticket prices or the economy—are sometimes unable to watch their favorite teams on television simply because a game is not completely sold out. We acknowledge that repeal of our sports blackout rules may not provide an immediate, direct benefit to these consumers. We find, however, that rather than fulfilling their intended goal of ensuring the widespread availability of sports programming to the viewing public, our sports blackout rules may be having the opposite effect by reinforcing and implicitly endorsing a private policy that deprives many consumers of the ability to watch on television the teams that they have subsidized through their tax dollars. Accordingly, we conclude that the public interest will be served by eliminating regulatory reinforcement and endorsement of the NFL's blackout policy.

C. Impact of Eliminating Sports Blackout Rules on NFL's Ability To Control Distribution of Its Games

29. The NFL claims that the sports blackout rules provide protections that cannot be achieved through other regulatory means or by private contract and thus without the rules, there would likely be a decrease in the amount of professional sports on broadcast television, thereby decreasing the availability of sports programming to the public. Specifically, the NFL and NAB raise a number of arguments as to why, as a result of the compulsory copyright licenses and contractual limitations, the NFL will be unable to control the distribution of its games or obtain blackout protection in the private marketplace—measures they claim are necessary to ''[help] keep sports programming on free, over-the-air broadcast television, available to all viewers.'' Below, we address these arguments and explain that the protections that will remain available to the NFL after repeal of the sports blackout rules will be adequate to ensure that broadcast television remains an attractive medium for distributing sports content. Accordingly, if the NFL (or any other sports league) chooses to continue its blackout policy, it must do so by relying on the same processes available to any other entity that wishes to protect its distribution rights in the marketplace.

i. NFL's Blackout Policy

30. Elimination of the sports blackout rules will not, by itself, preclude blackouts of future NFL games because the NFL's blackout policy, rather than the Commission's rules, determines whether games are blacked out on local television stations. The NFL's blackout policy is given effect through contractual arrangements between the NFL and the entities to which it grants distribution rights, including television networks and their affiliates, national sports networks such as ESPN and the NFL Network, and MVPDs. The Commission's sports blackout rules have merely reinforced these contractual arrangements by barring MVPDs from retransmitting, within the specified local blackout zone, games that the NFL has required local television stations to black out. Thus, repeal of the sports blackout rules will not remove the NFL's private blackout policy or likely end blackouts on local television stations. The NFL indicates that it likely will continue to enforce its blackout policy in the absence of the sports blackout rules. As we explain below, to the extent that the NFL chooses to continue its blackout policy, we find it to be in the public interest to require it to rely on the same avenues available to other market participants in order to protect its distribution rights rather than provide additional protections under sports blackout rules which no longer serve their original purpose of ensuring that sports telecasts are widely available to the viewing public.

ii. Compulsory Copyright Licenses

31. The compulsory copyright licenses granted under the Copyright Act permit cable systems and, to a more limited extent, satellite carriers to retransmit the signals of distant broadcast stations without obtaining the consent of owners of content carried on the stations, including the sports leagues whose games are carried on those stations, when the carriage of such stations is permitted under FCC rules. The NFL and NAB argue that, in the absence of the sports blackout rules, the compulsory copyright licenses will enable MVPDs to circumvent the private contractual agreements between the NFL and broadcasters and retransmit distant stations carrying locally blacked out games. This ''loss of control'' over program distribution, according to commenters, ''would threaten the continued distribution of major sporting events on free, over-the-air television'' thereby leading sports leagues to move the programming to ''pay platforms where the compulsory license would not undermine their ability to control distribution.'' We do not agree with the NFL and NAB that the Copyright Act, left unchecked by sports blackout rules, will make broadcast television less competitive in obtaining rights to popular sports programming and accelerate its migration to pay TV. With respect to satellite carriers, we expect that the limited nature of the compulsory license granted to satellite carriers by the Copyright Act may largely preclude them from retransmitting the signals of distant network stations carrying locally blacked out NFL games. Satellite carriers 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 and the subscribers are ''unserved'' by the

local network stations over the air. Satellite carriers currently offer local-into-local service to more than 99 percent of U.S. television households, including all markets that are home to NFL teams. Thus, with certain exceptions, it appears that satellite carriers may be precluded by statute from retransmitting distant network stations carrying locally blacked out NFL games. And although cable operators may in certain circumstances use the compulsory copyright license to retransmit the signals of distant broadcast stations without obtaining the consent of the content owners, including the sports leagues whose games are carried on those stations, we believe, as explained below, that the NFL can adequately protect its distribution rights through private contractual arrangements with broadcast networks and MVPDs.

iii. Retransmission Consent and Contractual Arrangements With Broadcasters

32. The NFL asserts that private contractual arrangements with broadcast networks will not adequately protect its program distribution rights and, therefore, eliminating the sports blackout rules will result in the migration of sports programming from broadcast television to pay TV, thereby decreasing public access to games. We disagree. As explained above, we believe that it would not be in the NFL's economic interest to remove their games from broadcast television. And in any event, as explained below, the retransmission consent requirement and its contractual arrangements with broadcasters will provide the NFL with adequate protection to control the distribution of its programming following elimination of the sports blackout rules. When the cable sports blackout rule was first adopted nearly 40 years ago, the Communications Act prohibited a broadcast station from rebroadcasting another station's signal without the latter's permission, but did not prohibit cable retransmission of broadcast stations without permission. In the 1992 Cable Act, however, Congress extended this restriction on unauthorized retransmission of broadcast stations to cable operators. The restriction on unauthorized retransmission of broadcast stations was later extended to all MVPDs. Thus, with limited exceptions, MVPDs today may not carry a broadcaster's signal without the permission of the broadcaster. Accordingly, the retransmission consent requirement helps to ensure that broadcast television remains an attractive medium for distributing sports content.

33. The NFL argues that without sports blackout rules, private contracts with broadcasters will not adequately protect its distribution rights. According to the NFL, it is unable to prevent contractually network affiliates from allowing their signals to be imported into a market where an NFL game has been blacked out because it lacks direct privity of contract with the affiliates; its contracts with the broadcast networks do not contain provisions requiring the networks to ensure that their affiliates prohibit MVPDs from retransmitting blacked out NFL games into a local market; and the networks have no incentive to reopen these contracts to add such a provision. A review of network affiliation agreements on file with the Commission, however, indicates that many existing network affiliation agreements already include provisions prohibiting the affiliate from allowing its signal to be retransmitted by an MVPD in a distant market. It appears, therefore, that such provisions are likely standard clauses routinely included in network affiliation agreements. Given that many, if not all, existing network affiliation agreements effectively provide the NFL with blackout protection, we find that the NFL's assertion that the networks would be required to amend their affiliation agreements with each of their nearly 200 local network affiliates to adequately protect its distribution rights (e.g., include blackout protection) is at least greatly overstated.

34. To the extent that any existing network affiliation agreements do not already include such provisions, the record suggests that the NFL has the ability to adequately protect its rights (e.g., obtain blackout protection) through negotiations with broadcast networks in the private marketplace. Contrary to the NFL's assertion, the record shows that the networks would have a very strong incentive to reopen their contracts with the NFL and affiliates to include blackout protection for the NFL—namely, to increase the chances that each network will be able to continue airing NFL games after 2022, when their existing contracts with the NFL expire. For example, were CBS to reopen its contracts but NBC fail to take this step, presumably CBS would enjoy an advantage over NBC in the next competition for NFL television rights. As discussed above, NFL games are consistently the most highly-rated programs on broadcast television, which translates into the highest possible advertising revenues for the networks. The popularity of the NFL games and the steep ad rates that these games command appear to provide the networks ample motivation to reopen their contracts with the NFL to include blackout protection, where such protection is needed. In addition, NFL programming is highly valuable to the broadcast networks because it provides them a platform to promote their prime-time lineups and boosts their ratings for prime-time and other network programming. Further, while the NFL contends that an affiliate would have no incentive to open its existing affiliation agreement for early renegotiation to accept such a provision, the record shows that the affiliates will likewise be highly motivated to keep the NFL games on their network. In any event, regardless of the NFL's ability to obtain blackout protection without the rules, we conclude that there is no public interest justification for retaining the rules because we find that there is little risk that sports telecasts on broadcast television will be significantly curtailed without them.

iv. Contractual Arrangements With MVPDs

35. The NFL similarly asserts that it cannot adequately protect its program distribution rights through its private contractual agreements with MVPDs and, therefore, repeal of the sports blackout rules may force it to move its games from broadcast television to pay TV, resulting in reduced public access to NFL games. But so long as the NFL is able to protect its program distribution rights through agreements with broadcasters, it need not do so through agreements with MVPDs. In any event, contrary to the NFL's arguments, we observe that the NFL also has the ability to obtain blackout protection through private contractual arrangements with MVPDs. The NFL indicates that it has contracts with nine major operators of cable, satellite, and telecommunications services and a national cooperative that represents many smaller MVPDs that distribute the NFL Network and NFL RedZone, but asserts that these contracts contain no provisions that prohibit the MVPDs from importing a distant signal of a non-NFL Network game into a market where that game has been blacked out on the local broadcast station. The NFL claims that without such protection, it cannot accomplish the goals of the sports blackout rules through these contracts. The NFL argues that it took many years of difficult negotiations with the MVPDs to achieve widespread carriage of the NFL Network and NFL RedZone and that it sees no incentives for the MVPDs to reopen these contracts—which

typically run for seven to nine years—and accept an unrelated, collateral provision that limits their ability to import a distant signal of a local non-NFL Network game that has been blacked out. Based on the record gathered in this proceeding, we believe the NFL's claimed difficulty is overstated. We recognize that contract negotiations can be difficult. Nevertheless, the record shows that the NFL is sufficiently positioned to incentivize the MVPDs to reopen their contracts and include blackout provisions to protect the NFL's distribution rights of its games shown on broadcast television if necessary. The NFL Network is one of the fastest growing cable networks, and is highly valued by MVPDs. Accordingly, we expect that MVPDs will be motivated to reopen their contracts and discuss inclusion of a blackout provision, if the NFL offers adequate incentives. Even if the MVPDs are unwilling to do so, however, as discussed above, we find that there is little risk that the NFL will move its games from broadcast television to pay TV.

36. We note, moreover, that the NFL offers no explanation as to why MVPDs currently comply with the NFL's policy of blacking out games that are not sold out throughout the NFL clubs' home territories, which generally extend well beyond the 35-mile zone of protection afforded by the Commission's sports blackout rules. The NFL has more broadly defined a club's ''home territory'' to include the surrounding territory 75 miles in every direction from the exterior corporate limits of the city in which the club is located. In addition, the NFL has defined one or more ''secondary markets'' for most teams, which include any network affiliate station(s) whose signal can be seen within 75 miles of the game site. Under the NFL's blackout policy, if a game is not sold out within 72 hours prior to kickoff, the game is blacked out on network affiliates in both the team's home market and any secondary markets. And notwithstanding the fact that the Commission's sports blackout rules only provide a 35-mile zone of protection, MVPDs apparently comply with the NFL's policy of blacking out games in both the home and secondary markets. Such blackouts clearly go well beyond the scope of what is required under the Commission's sports blackout rules and indicate that the NFL has the ability to obtain even greater blackout protection from MVPDs in the private marketplace than that afforded under the Commission's sports blackout rules. In any event, regardless of the NFL's ability to obtain blackout protection without the rules, we conclude that there is no public interest justification for retaining the rules because we find that there is little risk that sports telecasts will not be widely available on television without them.

v. Compulsory License and Retransmission Consent Fees

37. The NFL and NAB argue that the current copyright royalty system would not discourage all cable systems from retransmitting distant signals of locally blacked out games. We expect, however, that even if cable operators are able to obtain consent to retransmit a distant signal of a locally blacked out game, compulsory license fees, along with retransmission consent fees, may make it unprofitable for them to do so in many cases. The copyright royalty system is highly complex and the cost of importing distant signals varies widely by cable system, depending on the size of the cable system and the number of distant signals carried. As NCTA and SFC point out, cable systems that retransmit a distant signal for a single day, or even a single sports event, must pay royalties for the signal as if it had been carried for the entire six-month compulsory license accounting period. Thus, in some cases, compulsory license fees alone may make it prohibitively expensive for cable systems to retransmit a distant signal carrying a locally blacked out sports event.

38. Additionally, we note that retransmission consent fees have risen sharply in recent years, and the trend is expected to continue. The rising costs for sports rights have been a significant factor in broadcasters' demands for larger retransmission consent fees. NFL games are among the most popular and costly programming on television. Moreover, unlike a situation where a station cannot reach an agreement on retransmission consent with a cable system for in-market carriage—resulting in a loss of the station's local audience and a corresponding loss in local advertising revenues—a distant station does not risk losing any local advertising revenues if it cannot reach an agreement with a cable system for out-of-market carriage; thus, a distant station would be in a very good bargaining position vis-à-vis the cable system to demand high retransmission consent fees. Accordingly, we expect that retransmission consent fees charged by distant stations for retransmission of locally blacked out NFL games would be substantial and, along with the compulsory license fees, may make it cost prohibitive for cable systems to carry such distant stations in at least many situations. In any event, regardless of the NFL's ability to obtain blackout protection without the rules, we conclude that there is no public interest justification for retaining the rules because we find that there is little risk that sports telecasts will not be widely available on television without them.

D. Local Impact of Eliminating Sports Blackout Rules

39. We now examine the impact of eliminating the sports blackout rules on other interested parties. We conclude that eliminating the sports blackout rules will not adversely impact broadcasters, consumers, or local businesses.

i. Impact on Localism

40. We conclude that the elimination of the sports blackout rules is unlikely to adversely impact localism in broadcasting. NAB asserts that elimination of the sports blackout rules will result in decreased advertising revenues for local stations in markets prone to NFL blackouts, such as San Diego, Jacksonville, Buffalo, and Cincinnati, which in turn will diminish those stations' ability to provide quality programming, including sports programming. As explained in detail above, however, the record demonstrates that the sports blackout rules are no longer needed to ensure that sports programming is widely available to the viewing public. In addition, elimination of the sports blackout rules is unlikely to accelerate the migration of NFL games from over-the-air to pay TV in the near future or in the longer term. We also note that the record demonstrates that the NFL will be able to achieve exclusivity following the repeal of the sports blackout rules, if it chooses to do so, thus maintaining the attractiveness of NFL games to advertisers. Further, we note that it may benefit localism if the NFL ended its blackout policy because local stations in markets prone to blackouts may carry more games and earn more advertising revenues. Therefore, we conclude that retention of the sports blackout rules is not necessary to preserve or promote localism.

ii. Impact on Consumers

41. We acknowledge that repeal of the sports blackout rules may not provide consumers relief from local blackouts of NFL games because the NFL may choose to continue its private blackout policy. The NFL has indicated that it will likely still require non-sold-out games to be blacked out locally, and consumers will

be unable to watch those games on either broadcast television or pay TV. We also conclude, however, that elimination of the sports blackout rules is unlikely to harm consumers. As we discuss at length above, the record indicates that elimination of the sports blackout rules is unlikely to accelerate the migration of NFL games from free, over-the-air television to pay TV. Since the NFL is in the first year of nine-year contracts with the CBS, Fox, and NBC television networks to air NFL games on broadcast television, there will be no additional migration of NFL games to pay TV through at least 2022.

42. Additionally, we find unconvincing the arguments that elimination of the sports blackout rules will harm consumers by causing NFL teams to raise ticket prices. The NFL's economist expert, Dr. Singer, asserts that the sports blackout rules provide its teams with an economic incentive to price tickets below the levels that would exist if teams were maximizing gate receipts only. Dr. Singer states that even if a team could increase its total gate receipts by raising ticket prices, the team likely would keep prices low in an effort to fill seats and avoid a blackout because blackouts result in loss of advertising revenues. Thus, he avers that elimination of the sports blackout rules likely would lead to higher ticket prices because sports teams would no longer have an incentive to keep attendance above a certain level; instead, their ticket pricing strategy would focus on maximizing gate receipt revenue. As the Sports Economists observe, however, there is no empirical support for this argument and ''there is no logical connection between the [NFL's blackout] policy and pricing.'' In addition, Dr. Singer concedes that ''[e]conomists have offered additional hypotheses to explain why NFL teams refrain from raising ticket prices, including public pressure, the need to establish long-term relationships with fans, and the desire to maximize in-stadium revenues, such as concessions and parking. . . . It is plausible that some or all of these considerations also play a role in tempering ticket prices. . . .'' Dr. Singer makes no attempt to quantify the marginal impact of the sports blackout rules on ticket prices given these other factors. Moreover, as the Sports Economists point out, an NFL team can take other measures to avoid blackouts, such as reducing the prices of unsold seats and removing seats or covering them with tarps to reduce a stadium's seating capacity. Furthermore, to the extent the NFL chooses to continue its blackout policy through other existing regulations and through private contractual agreements, teams will retain their incentive to limit increases in ticket prices.

43. Dr. Singer also asserts that the sports blackout rules benefit national television viewers because ''[s]old-out stadiums populated by boisterous, visible fans make telecasts of NFL games more appealing to the marginal, national fan, thereby improving fans' viewing experiences, and increasing the value of NFL programming'' to national audiences and therefore to advertisers. As the Sports Economists observe, however, the difference between a fully sold-out stadium and a nearly full stadium subject to a local blackout due to failure to sell out is likely not very significant in terms of appeal to national audiences and advertisers, and it is not technologically difficult for broadcasters to avoid showing empty portions of non-sold-out stadiums. Further, we note that the NFL's blackout policy allows teams to cover seats with tarps in order to reduce stadium capacity and thereby avoid blackouts, and to reduce the percentage of tickets that must be sold in order to avoid a blackout to as low as 85 percent (thereby leaving up to 15 percent of non-premium seats empty). In addition, the NFL does not count non-sold-out premium seats for purposes of its blackout policy. We find it difficult to reconcile these features of the NFL's blackout policy—which allow teams to leave significant numbers of seats empty without facing a blackout—with its argument that the sports blackout rules are needed to make telecasts of NFL games more appealing to audiences and advertisers.

iii. Impact on Local Businesses and Economies

44. Several commenters express concern that elimination of the sports blackout rules will adversely impact local businesses and economic activity in and surrounding NFL stadiums by removing incentives to fill the stadiums. These commenters assert that NFL stadiums and related infrastructure investment have helped to create jobs, support businesses, and generate tax revenue and are important sources of employment, growth, and development for local communities. We disagree that eliminating the sports blackout rules will remove incentives for NFL clubs to sell out stadiums. In-stadium revenues (e.g., concessions, parking) are a significant source of revenue for NFL clubs and will provide them an economic incentive to fill their stadiums. Additionally, if the NFL chooses to continue its blackout policy, it will be able to control the distribution of its games through other existing regulations or through contractual arrangements in the private marketplace. Accordingly, repeal of the sports blackout rules will not create a disincentive for NFL teams to fill their stadiums or have a negative impact on local economies.

Other Issues

45. We reject the Baseball Commissioner's assertion that the sports blackout rules remain necessary to protect the ability of MLB clubs to license to RSNs the exclusive right to televise home games. The Baseball Commissioner states that the sports blackout rules prevent MVPDs from exploiting the compulsory copyright license by importing distant broadcasts of games that MLB clubs have licensed to RSNs such as MASN and YES Network to televise on an exclusive basis. According to the Baseball Commissioner, the ability to protect these exclusive rights under the sports blackout rules incentivizes RSNs, as exclusive licensees, to televise the games in their local markets and incentivizes MLB clubs to license the distribution of games on distant broadcast stations (i.e., in the away team's local market), thereby maintaining the overall availability of sports programming to television viewers. We note, however, that the sports blackout rules were not intended to protect the exclusive distribution rights granted by individual sports teams to RSNs, nor were they intended to prevent dual telecasts of the same game in the same local market. Rather, they were intended to promote the wide availability of sports events on television, and the Baseball Commissioner did not submit into the record any economic evidence or analysis that it would be profitable for baseball teams to curtail the availability of games on television if the blackout rules are repealed. Accordingly, we see no need to retain the sports blackout rules to protect RSN exclusivity. Additionally, the Baseball Commissioner's proposal that we ''strengthen'' the sports blackout rules by prohibiting MVPDs from importing a distant station carrying a game that is being carried live on a local broadcast station is beyond the scope of this proceeding and we decline to consider it.

IV. Procedural Matters

A. Final Regulatory Flexibility Act Analysis

46. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the Notice of Proposed Rulemaking (*NPRM*) in this proceeding. The Federal Communications Commission (Commission) sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. The Commission received no comments on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Report and Order

47. The Commission's sports blackout rules prohibit cable operators, satellite carriers, and open video systems (OVS) 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. The Commission first adopted a sports blackout rule for cable operators in 1975, when game ticket sales were the primary source of revenue for sports leagues. This rule was intended 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 television viewers. At the direction of Congress, the Commission later applied the cable sports blackout rule to open video systems and then to satellite carriers to provide parity between cable and newer video distributors.

48. Sports leagues' blackout policies, rather than the Commission's rules, determine which sports events are blacked out on local television stations. These policies are given effect 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 multichannel video programming distributors (MVPDs). The Commission's rules merely supplement these contractual relationships by barring MVPDs from retransmitting, within the local blackout zone, games that the sports leagues or individual teams require local television stations to black out.

49. In 2012, the Media Bureau issued a Public Notice to request comment on a Petition for Rulemaking seeking elimination of the sports blackout rules. The record amassed in response to the Public Notice suggested that, given the substantial changes in the sports industry in the 40 years since the sports blackout rules were originally adopted, the sports blackout rules may no longer be necessary to ensure the overall availability of sports programming to the general public. The Commission subsequently released an *NPRM* seeking comment 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.

50. Based on the record before us, we conclude that the sports blackout rules are no longer necessary to ensure that sports programming is widely available to the public. The sports industry has evolved dramatically in the four decades since the cable sports blackout rule was adopted. The record confirms that the sports blackout rules are no longer relevant for sports other than professional football. With respect to NFL football, television revenues have become the dominant share of NFL revenues with a corresponding decrease in gate receipts. Moreover, the number of sell-outs and total attendance at NFL games has increased substantially since 1975, reflecting an increase in the quality and popularity of NFL games. These trends undermine the notion that the NFL would find it profitable to significantly restrict television broadcasts of its games to protect gate receipts and in-stadium revenues. Additionally, the loss to consumers of their ability to view the game on television when an NFL game is blacked out exceeds any gain in gate receipts and other revenue that may accrue to the NFL as a result of a blackout, and the record indicates that the NFL is unlikely to migrate its games to pay TV following elimination of sports blackout rules because it would not be profitable for it to do so. Accordingly, based on all of these factors, we conclude that the economic considerations underlying the sports blackout rules are no longer valid and the sports blackout rules therefore are no longer needed to ensure that NFL games are widely available to television viewers.

51. We recognize that eliminating our sports blackout rules is unlikely to end all sports blackouts. The NFL has stated that it most likely will continue its underlying blackout policy. Thus, consumers may still be unable to view locally blacked out NFL games despite repeal of our rules. Nevertheless, we conclude that it will serve the public interest to eliminate regulations that are no longer needed to serve their original purpose of ensuring that sports telecasts are widely available to the viewing public. We also find that the public interest will be served by removing regulatory reinforcement (and the Commission's implicit endorsement) of the NFL's blackout policy. Although the NFL is the most lucrative sports league in the world with annual revenues totaling around $10 billion and most NFL teams are heavily subsidized by consumers through publicly funded stadiums and other tax benefits, consumers are sometimes unable to watch their favorite teams on television simply because a game is not completely sold out. While repeal of our sports blackout rules may not provide an immediate, direct benefit to these consumers, rather than fulfilling their intended goal of ensuring the widespread availability of sports programming to the general public, our sports blackout rules may be having the opposite effect by reinforcing a private policy that deprives many consumers of the ability to watch on television the teams that they have subsidized through their tax dollars.

52. To the extent that the NFL or any other sports league decides to continue their blackout policies following elimination of the sports blackout rules, it will no longer be entitled to additional protections under our sports blackout rules, but instead must rely on the same processes available to any other entities that wish to protect their distribution rights in the private marketplace. While the NFL argues that the sports blackout rules provide protections that cannot be achieved through other regulatory means or by private contract, we find that the NFL will be able to protect its distribution rights following elimination of the sports blackout rules through other existing regulations and through private contractual arrangements. First, the limited nature of the satellite compulsory license will largely preclude satellite carriers from retransmitting distant stations carrying locally blacked out NFL games. In addition, the retransmission consent requirement and the NFL's contractual arrangements with broadcasters will provide the NFL with the means to control the distribution of its programming. Specifically, we note that many existing network affiliation agreements already include provisions prohibiting the affiliate from allowing its signal to be retransmitted by an

MVPD in a distant market and some network affiliation agreements also include provisions giving the NFL broad discretion to limit or condition an affiliate's distribution rights to NFL games. To the extent that any network affiliation agreements do not include such provisions, the record indicates that the NFL can obtain blackout protection through negotiations with the broadcast networks in the private marketplace. The NFL also has the ability to obtain blackout protection through private contractual negotiations with MVPDs. Moreover, we note that MVPDs currently comply with the NFL's policy of blacking out games that are not sold out throughout the NFL clubs' ''home territories,'' which generally extend well beyond the 35-mile zone of protection afforded by the Commission's sports blackout rules. This indicates that the NFL has the ability to obtain greater protection than that provided by the Commission's sports blackout rules in the private marketplace, should it choose to do so. We further observe that retransmission consent fees and compulsory copyright license fees may, to some extent, make it unprofitable for cable operators to take advantage of the compulsory copyright licenses to retransmit distant stations carrying locally blacked out NFL games.

53. Finally, we conclude that elimination of the sports blackout rules will not adversely affect broadcasters, consumers, or local businesses. Localism is unlikely to be adversely affected by repeal of the sports blackout rules. In addition, elimination of the sports blackout rules will not harm consumers by forcing the NFL to migrate its games to pay TV or by causing the NFL to raise its ticket prices. Moreover, eliminating the sports blackout rules will not harm local businesses and local economies in areas surrounding NFL stadiums by removing incentives to fill the stadiums.

Summary of Significant Issues Raised in Response to the IRFA

54. No comments were filed in response to the IRFA. Additionally, pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration, and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

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

55. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted in the *Order.* 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 SBA. Below are descriptions of the small entities that are directly affected by the rules adopted in the *Order,* including, where feasible, an estimate of the number of such small entities.

56. *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.'' The SBA has developed a small business size standard for wireline firms within the broad economic census category, ''Wired Telecommunications Carriers.'' Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

57. *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.'' The SBA has developed a small business size standard for this category, which is: All such businesses having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, we estimate that the majority of such businesses can be considered small entities.

58. *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. Industry data shows that there were 1,100 cable companies at the end of December 2012. Of this total, all but ten cable operators nationwide are small under this size standard. In addition, under the Commission's rate regulation rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,945 cable systems nationwide. 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.

59. *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.'' There are approximately 56.4 million incumbent cable video subscribers in the United States today. 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. Based on available data, we find that all but ten incumbent cable operators are small entities under this size standard. 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. 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.

60. *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.'' The SBA has created the following small business size standard for such businesses: Those having $35.5 million or less in annual receipts. The 2007 U.S. Census indicates that 2,076 television stations operated in that year. Of that number, 1,515 had annual receipts of $10,000,000 dollars or less, and 561 had annual receipts of more than $10,000,000. Since the Census has no additional classifications on the basis of which to identify the number of stations whose receipts exceeded $35.5 million in that year, the Commission concludes that the majority of television stations were small under the applicable SBA size standard.

61. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial television stations to be 1,387. 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. We therefore estimate that the majority of commercial television broadcasters are small entities.

62. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations 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.

63. In addition, the Commission has estimated the number of licensed noncommercial educational television stations to be 395. These stations are non-profit, and therefore considered to be small entities.

64. *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, 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. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. 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. Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network. 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.

65. *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, 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. Census data for 2007 show that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, the majority of such businesses can be considered small entities.

66. *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. The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees. Census data for 2007 show that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, the majority of such

businesses can be considered small entities.

67. *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. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' The SBA has developed a small business size standard for this category, which is: All such businesses having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. 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. Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises. 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.

68. *Cable and Other Subscription Programming.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in operating studios and facilities 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.'' The SBA has developed a small business size standard for this category, which is: All such businesses having $35.5 million dollars or less in annual revenues. Census data for 2007 show that there were 659 establishments that operated that year. Of that number, 462 operated with annual revenues of $9,999,999 dollars or less. One hundred ninety-seven (197) operated with annual revenues of between $10 million and $100 million or more. Thus, under this size standard, the majority of such businesses can be considered small entities.

i. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

69. The *Report and Order* eliminates the sports blackout rules for cable operators, satellite carriers, and open video systems. The *Report and Order* does not adopt any new reporting, recordkeeping, or compliance requirements for small entities.

Steps Taken To Minimize Economic Impact on Small Entities and Significant Alternatives Considered

70. 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. The *IRFA* invited comment on issues that had the potential to have a significant impact on some small entities.

71. To the extent that the NFL or any other sports league decides to continue it blackout policy following elimination of the sports blackout rules, it can protect its distribution rights through other existing regulations and through private contractual arrangements. Because the NFL can protect its distribution rights through other existing regulations and through private contractual arrangements, repeal of the sports blackout rules will not adversely impact broadcasters or other affected entities as identified above, including small entities, by decreasing advertising revenues for local stations in markets prone to NFL blackouts or leading the NFL to migrate its games from broadcast television to pay TV.

ii. Report to Congress

72. The Commission will send a copy of the *Order,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Order,* including this FRFA, to the Chief Counsel for Advocacy of the SBA. The *Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

B. Paperwork Reduction Act

73. This document does not contain new or modified information collection requirements 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.

C. Additional Information

74. For additional information on this proceeding, contact Kathy Berthot, *Kathy.Berthot@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120.

V. Ordering Clauses

75. Accordingly, *it is ordered* that, 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), 573(b), this Report and Order *is adopted,* effective thirty (30) days after the date of publication in the **Federal Register**.

76. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order in MB Docket No. 12–3, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

77. *It is further ordered* that the Commission *shall send* a copy of this Report and Order in MB Docket No. 12–3 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 part 76 as follows:

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 and 573.

■ 2. Amend § 76.110 by revising the first sentence to read as follows:

§ 76.110 Substitutions.

Whenever, pursuant to the requirements of the syndicated exclusivity rules, a community unit is required to delete a television program on a broadcast signal that is permitted to be carried under the Commission's rules, such community unit may, consistent with these rules, substitute a program from any other television broadcast station. * * *

§ 76.111 [Removed]

■ 3. Remove § 76.111.

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

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

* * * * *

§§ 76.127 and 76.128 [Removed]

■ 5. Remove §§ 76.127 and 76.128.

■ 6. 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. * * *

§ 76.1506 [Amended]

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

[FR Doc. 2014–24612 Filed 10–23–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2 and 4

[FAC 2005–77; FAR Case 2012–023; Correction; Docket 2012–0023, Sequence 1]

RIN 9000–AM60

Federal Acquisition Regulation; Uniform Procurement Identification; Correction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule; Correction.

SUMMARY: DoD, GSA, and NASA are issuing a correction to FAR Case 2012–023; Uniform Procurement Identification (Item III), which was published in the **Federal Register** at 79 FR 61739, October 14, 2014.

DATES: *Effective:* November 13, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, at 202–501–0650, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–77; FAR Case 2012–023; Correction.

SUPPLEMENTARY INFORMATION:

Correction

In rule FR Doc. 2014–24240 published in the **Federal Register** at 79 FR 61739, October 14, 2014, make the following correction:

On page 61741, in the first column, second line, correct ''4.601'' to read ''4.1601''.

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

Dated: October 21, 2014.

William Clark,

Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2014–25416 Filed 10–23–14; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 130717632–4285–02]

RIN 0648–XD504

International Fisheries; Pacific Tuna Fisheries; 2014 Bigeye Tuna Longline Fishery Closure in the Eastern Pacific Ocean

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; fishery closure.

SUMMARY: Because the 2014 catch limit of 500 metric tons is expected to be reached, NMFS is closing the U.S. pelagic longline fishery for bigeye tuna for vessels over 24 meters in overall length in the eastern Pacific Ocean (EPO) through December 31, 2014. This action is necessary to prevent the fishery from exceeding the applicable catch limit established by the Inter-American Tropical Tuna Commission (IATTC) in Resolution C–13–01, which governs tuna conservation in the EPO from 2014–2016.

DATES: Effective October 31, 2014, through December 31, 2014.

FOR FURTHER INFORMATION CONTACT: Rachael Wadsworth, NMFS West Coast Region, 562–980–4036.

SUPPLEMENTARY INFORMATION: Pelagic longline fishing in the EPO is managed, in part, under the Tuna Conventions Act of 1950 (Act), 16 U.S.C. 951–962. Under the Act, NMFS must publish regulations to carry out recommendations of the Inter-American Tropical Tuna Commission (IATTC) that have been approved by the Department of State (DOS). The United States is a member of the IATTC, which was established under the Convention for the Establishment of an Inter-American Tropical Tuna Commission signed in 1949 (Convention) to provide an international agreement to ensure the effective international conservation and management of highly migratory species of fish in the IATTC Convention Area.

The IATTC Convention Area includes the waters of the eastern Pacific Ocean (EPO) bounded by the coast of the Americas, the 50° N. and 50° S. parallels, and the 150° W. meridian. Regulations governing fishing by U.S. vessels in accordance with the Act appear at 50 CFR part 300, subpart C. Those regulations implement recommendations of the IATTC for the