

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	MB Docket No. 08-214
)	
NFL Enterprises LLC,)	File No. CSR-7876-P
Complainant)	
v.)	
Comcast Cable Communications, LLC,)	
Defendant)	

To: The Commission

NFL ENTERPRISES LLC’S RESPONSE
TO COMCAST’S SUPPLEMENT
TO EMERGENCY MOTION FOR STAY

The input of the Commission is needed to resolve an untenable situation. In the wake of two recent Orders of the Media Bureau interpreting its own Hearing Designation Order (“HDO”), determining that its own delegation to the Administrative Law Judge (“ALJ”) had expired, and stating that it would proceed to resolve this proceeding (and five other proceedings) without the aid of a recommended decision by the ALJ, the ALJ issued an Order this week asserting jurisdiction and demanding a status report from the parties.

In early October, the Media Bureau’s HDO directed the ALJ to resolve any factual disputes not resolved by the HDO and to issue a recommended decision, including if appropriate a proposed remedy, by December 9, 2008. The ALJ ultimately established a schedule, including extensive document discovery and depositions, pursuant to which an evidentiary hearing on the first of the six proceedings would not even begin until March 17, 2009. And in response to the ALJ’s Order of January 6, 2009, Comcast

and the defendants in the other proceedings have now proposed a schedule pursuant to which the first of the six evidentiary hearings would not begin until April 7, 2009.

The inconsistent assertions of jurisdiction by the Media Bureau and the ALJ arise in the context of a statute that requires prompt and expeditious resolution of carriage discrimination disputes. The priority of NFL Enterprises LLC (“Enterprises”) remains to secure a prompt and fair resolution of its carriage discrimination claim against Comcast. That objective cannot be achieved under the initial schedule proposed by the ALJ, and it would be further undermined by the delayed schedule now proposed by the cable company defendants.

In its status report to the ALJ, Enterprises proposed a revised schedule – one that would eliminate extensive and unnecessary document production and depositions as well as substitute written for oral direct testimony. The revised schedule would lead to completion of the evidentiary phase of this proceeding by February 20. A copy of the Status Report submitted by Enterprises to the ALJ (without original exhibits), to which we invite the Commission’s attention, is attached to this Response as Exhibit 1.

Enterprises submits that, under a traditional stay analysis, the cable companies fall far short of satisfying the requirements for a stay, that the relief requested by Comcast and the other cable companies should be denied, and that steps should be taken to confirm the Media Bureau’s authority to resolve this matter without dueling assertions of jurisdictions. That having been said, Enterprises recognizes that if the expedited schedule proposed in its Status Report is adopted, two of the four factors required for a stay determination – the balance of equities and the public interest – would be much closer. The other two factors – the likelihood that defendants will not prevail on

the merits and their inability to demonstrate irreparable harm – would weigh against a stay in any event.

I. Background

This consolidated proceeding involves six separate program carriage cases: one initiated by Enterprises, one by TCR Sports Broadcasting Holding, L.L.P., d/b/a Mid-Atlantic Sports Network (“MASN”), and four by Herring Broadcasting, Inc. d/b/a Wealth TV (“WealthTV”). On October 10, 2008, the Media Bureau released a decision finding that the complainants had established *prima facie* cases, “direct[ing] these matters to an [ALJ,] and order[ing] that the ALJ return Recommended Decisions in these matters . . . within 60 days of the release of this [order].” Memorandum Opinion and Hearing Designation Order, DA 08-2269, ¶ 1-3 (rel. Oct. 10, 2008) (“HDO”).

The 60-day period prescribed by the Media Bureau ended on December 9, 2008. By that date, the ALJ presiding over the cases had not yet issued a recommended decision in any of the matters. Instead, indicating his intent to conduct *de novo* review of the issues resolved by the Media Bureau, the ALJ established a schedule providing for broad discovery. Under that schedule, the first of the six evidentiary hearings was not even to begin until March 17, 2009, with recommended decisions to follow on some unidentified date or dates after the hearings were completed. Procedural and Hearing Order, FCC 08M-50 (rel. Dec. 2, 2008).

After the expiration of the 60-day period, the Media Bureau, interpreting its own Hearing Designation Order, found that “[t]he ALJ’s limited authority to consider these matters extended through December 9, 2008. That deadline has passed, and the ALJ’s delegated authority over these hearing matters has thus expired under the terms of the HDO.” Memorandum Opinion and Order, DA 08-8205, ¶ 2 (rel. Dec. 24, 2008)

(“December 24 Order”) (addressing WealthTV and MASN cases). The Media Bureau stated that it would “proceed to resolve” these disputes “without the benefit of a recommended decision from the ALJ.” *Id.*; *see also* Memorandum Opinion and Order, DA 08-2819 (rel. Dec. 31, 2008) (“December 31 Order) (applying same reasoning and treatment to Enterprises case).

In response, the ALJ asserted that the cases were still before him. He issued an order stating that “procedural dates previously set require and deserve compliance by all parties.” Order, FCC 09M-01 (rel. Jan. 6, 2009). The ALJ required the parties to submit status reports describing the status of various matters and proposing dates for further proceedings before him. *Id.*

There are several pending motions that address the current situation. The defendants filed a motion before the ALJ asking him to affirm his previously issued scheduling order. Separately, the defendants filed an emergency motion before the Commission seeking a stay of proceedings pursuant to the Media Bureau’s December 24 Order and an emergency application for review of that Order. Comcast later filed a Supplement to the motion for a stay to incorporate the Media Bureau’s December 31 Order (which addresses the Enterprises matter), to which this paper responds, and a similar Supplement to the application for review.

II. Discussion

A. A Clear Resolution is Needed.

There is no dispute that the parties are in an untenable position. The defendants have stated as much. *See Comcast et al.*, Supplemental Notice in Support of Emergency Motion for Stay and Emergency Application for Review, at 3 (Jan. 7, 2009) (noting the “parallel, conflicting adjudication process over the same complaints, the same

parties, and the same issues,” and stating that this is “untenable for all parties”). As defendants have pointed out, simultaneous proceedings before the Media Bureau and the ALJ pose a risk of “unnecessary waste of government and private resources” and a “potential for inconsistent obligations, rulings, and results.” *Id.* In at least this respect, Enterprises and the defendants are in agreement. For this reason, a resolution by the Commission is warranted.

B. Defendants Are Incorrect in Asserting that the Proceedings Before the Media Bureau Should Be Stayed.

The parties disagree about whether the Media Bureau or the ALJ should resolve the remaining factual disputes in this proceeding. On that question, as things now stand, we respectfully suggest that the Media Bureau’s jurisdiction should remain in place and that its efforts to resolve the remaining issues in dispute should not be stayed.

First, we do not believe that Comcast and the other cable company defendants are likely to succeed on the merits of their application for review. For example, it appears to us that it was within the Media Bureau’s discretion to delegate (or not) to the ALJ, that the Media Bureau properly made the 60-day time limit a mandatory part of the delegation contained in the HDO, and that the ALJ did not have the authority to disregard that time limit.

The mandatory language of the HDO is clear: “[W]e . . . *order* that the ALJ return a recommended Decision in th[ese] matters to the Commission pursuant to the procedures set forth below within 60 days of the release of this *Order*.” HDO at ¶ 3 (emphasis added). The Media Bureau referred repeatedly to the 60-day deadline, and it specifically provided for an extension of that deadline in only one circumstance: the pursuit of alternative dispute resolution by the parties. *Id. passim.* In any event, were

there any question as to the Media Bureau's intent in issuing the HDO, we think that such question would be most authoritatively resolved by the Media Bureau's interpretation of its own prior order. December 24 Order at ¶¶ 14-19.

Our reading of the Media Bureau's HDO is influenced by the fact that, where hearing designation orders are intended to contain only aspirational time limits, they make that intent unambiguously clear. *See, e.g., MobileMedia Corp.*, 12 FCC Rcd. 14896, ¶ 13 (1997) (“The presiding Administrative Law Judge is directed to *endeavor to issue* his recommended decision within six months of the release of this order.”) (emphasis added); *id.* at ¶ 15 (instructing ALJ to “*make every effort* to conclude the case, including certifying the record to the Commission, within six months of the release of this order”) (emphasis added); *see also RKO General, Inc.*, 4 FCC Rcd. 1532, ¶ 10 (1989) (“After the Board has received exceptions and replies, it shall, *with highest priority*, proceed to review the ALJ's ranking of the applicants and issue decisions denying those applicants not ranking first.”) (emphasis added).

We also believe that the Media Bureau, which had discretion in the first instance about whether or not to refer the case to an ALJ,¹ had authority to limit the scope of its discretionary delegation and to reassert its authority over the proceedings in the event that the limitations were exceeded. *See, e.g., TCR Sports Broadcasting Holding, L.L.P. v. Comcast Corp.*, 21 FCC Rcd. 8989, ¶¶ 1, 13 (2006) (limiting delegation by imposing 45-day time limit for ALJ to issue recommended decision in carriage complaint

¹ *See In the Matter of Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution and Carriage*, 9 FCC Rcd. 2642, MM Docket No. 92-265, ¶ 31 (1993) (“Second Report and Order”) (the Commission staff may either “determine and outline the appropriate procedures for discovery, or will refer the case to an ALJ for an administrative hearing”).

proceeding); *Tequesta Television, Inc.*, 2 FCC Rcd. 41, ¶ 10 (FCC 1987) (“[A]n ALJ may not countermand a designation order issued under delegated authority as to matters already considered by the delegating authority.”); 47 C.F.R. § 0.204(a) (“Any official . . . to whom authority is delegated in this subpart is authorized to issue orders . . . *pursuant to such authority . . .*”) (emphasis added).

For these reasons, among others, the defendants are not likely to succeed on the merits of their request for a stay.

Defendants’ request for a stay is deficient in other respects as well. For instance, the “equities of the case,” Comcast *et al.*, Emergency Motion for Stay, at 1 (Dec. 30, 2008), favor continued handling of these cases by the Media Bureau, in large part because of the extensive delay built into the ALJ’s schedule. Some portion of that delay is attributable to the ALJ’s decision to engage in *de novo* review of the issues resolved by the Media Bureau; some portion is attributable to his decision to permit extensive (and in our view, entirely unnecessary and wasteful) document discovery and depositions. An additional portion, however, is attributable to the inherent constraints on one ALJ’s conducting six hearings *seriatim* and reaching six recommended decisions on an expeditious basis.

The delay is a crucial factor to be considered in two of the stay criteria – the balance of the equities and the public interest – in large part because of the importance that Congress and the Commission afforded *prompt* resolution of program carriage disputes: The Commission has recognized that the controlling statute, Section 616, contains an “explicit direction to the Commission to handle program carriage complaints expeditiously.” *In the Matter of Implementation of Sections 12 and 19 of the*

Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution and Carriage, 9 FCC Rcd. 2642, MM Docket No. 92-265, ¶ 23 (1993) (“Second Report and Order”). That principle would be undermined by an open-ended schedule of the kind prescribed by the ALJ, a schedule that Comcast seeks to extend. If implemented, the net result of Comcast’s proposed schedule would be to extend until late summer or fall the date upon which a recommended decision would be issued by the ALJ. That recommended decision – coming well over a year after the filing of our program carriage complaint – would then have to be followed by proceedings before the full Commission. That is not expedition.

From our standpoint, in light of the schedule prescribed by the ALJ and now proposed by Comcast to be extended and delayed, the statutory preference for expeditious handling of these cases would unquestionably best be served by leaving these cases under the jurisdiction of the Media Bureau, which has more resources at its disposal than a single ALJ could realistically hope to muster. Simply put, it would be more consistent with Congressional intent and fairer to the parties to permit the better-equipped Media Bureau to handle these cases.

As we have emphasized, however, Enterprises is most focused on ensuring a prompt and fair resolution of its program carriage complaint. Regardless of whether this proceeding continues before the Media Bureau or the ALJ, Enterprises’ claims against Comcast should be resolved at the earliest practicable date. To that end, all evidentiary processes (*i.e.*, expert discovery and a streamlined evidentiary hearing) should – and, in our view, could – be completed by February 20, 2009.

* * *

The Commission should provide clear direction to resolve the untenable situation in which the parties in these six matters find themselves. For the reasons stated above, it should deny the requested stay and rule that the proceedings should continue solely before the Media Bureau.

Respectfully submitted,



Jonathan D. Blake
Gregg H. Levy
Steven E. Fagell
Robert M. Sherman
Leah E. Pogoriler
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401
(202) 662-6000

Counsel for NFL Enterprises LLC

January 8, 2009

CERTIFICATE OF SERVICE

I, Leah E. Pogoriler, certify that on this 8th day of January, 2009, I caused a true and correct copy of the foregoing NFL Enterprises LLC's Response to Comcast's Supplement to Emergency Motion for Stay to be served via electronic mail upon:

David H. Solomon
L. Andrew Tollin
Robert G. Kirk
J. Wade Lindsay
Wilkinson Barker Knauer, LLP
2300 N Street, NW, Suite 700
Washington, D.C. 20037

James L. Casserly
Michael H. Hammer
Megan A. Stull
Michael Hurwitz
Willkie Farr & Gallagher LLP
1875 K Street, N.W.
Washington, D.C. 20006

Michael P. Carroll
David B. Toscano
Antonio J. Perez-Marques
Jennifer A. Ain
Davis Polk & Wardwell
450 Lexington Avenue
New York, NY 10017

*Counsel to Comcast Cable
Communications, LLC*

Kris Anne Monteith
Hillary S. DeNigro
Gary Schonman
Elizabeth Mumaw
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Monica S. Desai
Nancy Murphy
Steven Broeckaert
David Konczal
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554


Leah E. Pogoriler

Exhibit 1

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
NFL Enterprises LLC,)	MB Docket No. 08-214
Complainant)	
v.)	File No. CSR-7876-P
Comcast Cable Communications, LLC,)	
Defendant)	
)	

To: Marlene H. Dortch, Secretary
Federal Communications Commission

Attn: Chief Administrative Law Judge Richard L. Sippel

**NFL ENTERPRISES LLC'S
STATUS REPORT**

In response to the Order of the Chief Administrative Law Judge (“ALJ”) of January 6, 2009, FCC 09M-01, complainant NFL Enterprises LLC (“Enterprises”) hereby submits this Status Report in the above-captioned action.¹

As a preliminary matter, Enterprises notes the Orders of the Media Bureau, released December 24 and December 31, 2008, indicating (a) that the Media Bureau’s delegation of authority to the ALJ expired on or about December 9, 2008, and (b) that the Media Bureau would proceed to resolve this dispute without the benefit of a recommended decision from the ALJ.²

The conflict between the two noted Orders of the Media Bureau and the January 6, 2009 Order of the ALJ has placed the parties in a difficult, if not untenable,

¹ We acknowledge the ALJ’s suggestion that the complainants in the consolidated proceedings submit a joint status report, but the short time period afforded for a response made such a course impractical.

² DA 08-2805; DA 08-2819.

posture, as further explained below with respect to the specific inquiries posed by the January 6 Order.³

As a general matter, we read the January 6, 2009 Order as seeking suggestions from the parties on how this proceeding can be expedited for resolution. Enterprises respectfully submits that the keys to such expedition are (1) elimination of the extensive, fact-based discovery permitted by the ALJ's orders of December 2, 2008⁴ and December 24, 2008⁵ and (2) recognition that in the Hearing Designation Order, the Media Bureau resolved numerous issues, and made *prima facie* findings as to others, that render a process leading to *de novo* review inappropriate and inherently inefficient.

Judge Steinberg recognized in his October 22, 2008 Order that, "due to the time constraints imposed in the HDO . . . , discovery would not be practicable and WILL NOT BE PERMITTED." That judgment was plainly correct and it should be reinstated.

Given the nature of the narrow issues that remain to be resolved, there is no need for extensive document discovery or for depositions of fact-based witnesses. (We do not object to depositions of experts who offer opinions in this proceeding or to production of documents upon which such an expert relied in developing his opinions.) Certainly no such discovery is necessary for the development of a recommended remedy; and as to violation issues, the few remaining factual issues are sufficiently narrow and limited in scope that extensive fact-based discovery is unnecessary for their resolution.

³ Enterprises nonetheless responds to the ALJ's Order without prejudice to any argument it may later make with respect to Media Bureau's reading of the Hearing Designation Order or with respect to the Media Bureau's power to reassert its authority over the proceedings in the circumstances presented here.

⁴ Order, FCC 08M-50 (rel. Dec. 2, 2008) (establishing deadline for document requests).

⁵ Order, FCC 08M-56 (rel. Dec. 24, 2008) (allowing fact depositions).

Accordingly, regardless of whether further proceedings are conducted by the Media Bureau or before one or more ALJs, we strongly urge that discovery be tightly limited to what is necessary and consistent with (a) the Congressional command that these proceedings be handled expeditiously and (b) the limited scope and economic nature of the few factual issues that remain to be resolved.

Such discovery, we respectfully submit, does *not* include document discovery (and associated motions practice) of the kind authorized by the Orders of December 2 and December 24; nor, as the parties in some of the consolidated proceedings have already recognized, does it include depositions of fact witnesses. (We understand that the parties in one or more of the consolidated proceedings have *stipulated* that there will be no depositions of fact witnesses in those proceedings. There is no reason why such a bar should not be imposed here as well.)

Finally, in order to expedite resolution of the carriage discrimination claims asserted in Enterprises' complaint, *if document discovery and depositions are limited to experts, as suggested above*, Enterprises is prepared to defer resolution of its claim that, in violation of Section 616, Comcast required a financial interest in the NFL's programming as a condition for carriage of the NFL Network. If that claim (which is unique to Enterprises among the three complainants in the consolidated proceedings) were deferred, the Media Bureau or the ALJ could move forward promptly to resolve the Section 616 discrimination claim, which turns on objective economic facts and data, not on witnesses' credibility or who said what to whom. If extensive document discovery and depositions of fact witnesses are going to go forward in any event, however, Enterprises will continue to seek prompt resolution of both of its claims.

*

*

*

Set forth below are comments directly responsive to the inquiries raised in the January 6, 2009 Order:

1. ***Protective Order.*** Prior to the Media Bureau's recent Orders, the parties, anticipating extensive document discovery, exchanged multiple drafts of a protective order but did not reach agreement on terms. Such agreement would be facilitated if discovery were limited to documents upon which a testifying expert relied and depositions of experts.

Separately, Enterprises has substantial concerns, in light of the Media Bureau's Orders, about the authority of the ALJ to enter or to enforce a protective order if and when the parties reach agreement. Once that uncertainty is resolved, and depending on the extent of discovery permitted, the parties should be able to resolve with reasonable dispatch, or at least to narrow, their differences with respect to a protective order.

2. ***Document Discovery.*** Prior to the Media Bureau's recent Orders, the parties exchanged document requests, as well as responses and objections, but no documents were produced due in large part to the uncertain status of the proceedings, the absence of agreement on a protective order, and the uncertainties about a protective order noted above. Copies of the document requests and responses (which indicate the categories of documents and dates requested, documents objected as to production, reasons for objections, and intentions to produce) are attached hereto as Exhibits A-D.

Prior to the Media Bureau's recent Orders, Comcast indicated that it intends to file motions to compel production of additional documents. If fact-based

document discovery is permitted, Enterprises reserves the right to do the same. There is no agreement on a schedule for briefing or resolution of any such motions.

The burdens of document discovery are a substantial contributing factor delaying resolution of this proceeding and are entirely unnecessary in light of the limited number and nature of the issues that remain to be resolved. As explained above, Enterprises submits that, regardless of whether further proceedings are conducted by the Media Bureau or before an ALJ, there should be no document discovery other than documents upon which an expert relied in reaching his opinions.

3. *Deposition Discovery.* Prior to the Media Bureau's recent Orders, one fact witness – Frank Hawkins, Enterprises' principal witness on liability issues – was deposed by Comcast. No other depositions have been noticed, at least in part due to the uncertain status of the proceedings and the uncertainties about a protective order noted above. As explained above, regardless of whether further proceedings are conducted by the Media Bureau or before an ALJ, Enterprises submits that there should be no deposition discovery other than of experts.

Enterprises reserves the right – if non-expert deposition discovery is permitted – to notice the deposition of any person who submitted a declaration in support of Comcast's Answer to Enterprises' Complaint, and of any person identified by Comcast as an expected witness at any hearing in this proceeding. We expect that the deposition testimony of these individuals would relate to the contents of their declarations (if any) and to information relevant to Comcast's violations of Section 616. If non-expert depositions are permitted, Enterprises will notice and conduct such depositions in compliance with any pertinent regulations and any order permitting such depositions.

4. **Expert discovery.** Enterprises has retained Hal Singer, Ph.D., as a testifying expert; his declarations addressing violation issues accompanied Enterprises' Complaint and Reply. Dr. Singer is an expert in the field of economics, and he has experience both with telecommunications matters generally and Section 616 in particular. Comcast apparently has retained Jonathan Orszag and Larry Gerbrandt. The qualifications of Dr. Singer, as well as a summary of his expected opinion, have already been provided to Comcast and are attached hereto as Exhibits E and F; the same information for Messrs. Orszag and Gerbrandt, provided by Comcast, is attached hereto as Exhibits G and H.

The parties have not exchanged expert reports, and expert depositions have not been noticed, although Enterprises' expert – and one of Comcast's experts – submitted declarations addressing violation issues in support of the Complaint, Answer, and Reply. If discovery is limited to experts and a determination is made that a formal evidentiary hearing is necessary to resolve the remaining factual issues in dispute, Enterprises would be in a position to proceed with experts pursuant to the schedule proposed in response to Question 6, below. If discovery is not so limited and a determination is made that a formal evidentiary hearing is necessary, Enterprises would seek to reach a mutually agreeable schedule with Comcast that derives from any schedule established for fact discovery.

5. **Pending Motions.** There are two pending requests before the Commission. One is an Emergency Motion for Stay filed on December 30, 2008 by Comcast on behalf of itself, Bright House Networks, LLC, Cox Communications, Inc., and Time Warner Cable Inc. The motion asks the Commission to stay any further action

by the Media Bureau under paragraph 20 of its December 24 Order.⁶ The motion was filed in the five cases that do not involve Enterprises; the complainants in those cases (WealthTV and MASN) filed a timely joint response on January 6. On January 2, Comcast filed a Supplement to the motion to include the above-captioned case; Enterprises' response is due January 9. The FCC's rules do not permit replies in support of requests for a stay. Enterprises does not know when the Commission will reach a decision on the motion for stay.

The other request pending before the Commission is an Emergency Application for Review filed by Comcast on December 30, 2008 on behalf of itself, Bright House Networks, LLC, Cox Communications, Inc., and Time Warner Cable Inc. The application asks the Commission to vacate the Media Bureau's December 24 Order. The application was filed in the five cases that do not involve Enterprises; the complainants in those cases (WealthTV and MASN) filed a joint response on January 6.

On January 2, Comcast filed a Supplement to the application to include the above-captioned case and to ask the Commission to vacate the Media Bureau's December 31 Order; Enterprises' response is due January 21. A reply in support of the application may be filed within 10 days after the opposition is filed. Assuming Enterprises files an opposition on January 21, the defendants would have until February 2 to file a reply. Enterprises does not know when the Commission will reach a decision on the application for review.

We are unaware of any pending motion before the Media Bureau, although WealthTV, joined by MASN, did request by e-mail directed to the Chief of the

⁶ DA 08-2805.

Media Bureau that the Bureau provide “guidance in the form of an order specifying what materials are needed by January 5, 2009 in the interest of minimizing administrative delay.”⁷ All the cable companies responded to that request by e-mail.⁸ The Media Bureau has not yet responded to this e-mail exchange.

6. Proposed Procedural and Hearing Dates. In accordance with the discussion above regarding the appropriateness of limiting the scope of discovery, and in the event that this proceeding moves forward to a formal evidentiary hearing rather than some other means of resolving any remaining factual issues in dispute, Enterprises would propose the following schedule, which is designed to ensure a fair and prospectively expeditious resolution of Enterprises’ complaint. This schedule assumes that all direct testimony will be filed in writing, and that the only examination of witnesses permitted in the hearing would be cross-examination and re-direct:

January 16	-	Enterprises’ expert report disclosed, along with documents relied upon by expert in reaching his opinions.
January 23	-	Comcast’s expert reports disclosed, along with documents relied upon by experts in reaching their opinions.
January 29	-	Enterprises’ expert deposed. Notices of depositions must precede depositions by five business days.
February 5-6	-	Comcast’s experts deposed. Notices of depositions must precede depositions by five business days. This deadline constitutes the close of discovery, which should be limited to expert discovery.
February 10	-	Written direct testimony and hearing exhibits exchanged by 12 noon. Trial briefs are not necessary and should not be accepted.
February 18	-	Hearing, limited to cross-examination of witnesses submitting written direct testimony and re-direct, commencing at 9:30 a.m.

⁷ E-mail from Kathy Wallman to Monica Desai (Dec. 31, 2008).

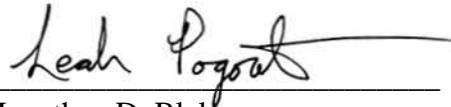
⁸ E-mail from David Solomon to Monica Desai (Jan. 2, 2009).

7. *Completion of Hearing.* Enterprises proposes the following schedule

to follow upon the one outlined above:

- | | |
|--------------------|---|
| February 20 | - Record closes. |
| March 4 | - Filing of proposed findings and conclusions, including drafts of recommended decisions. (Enterprises and Comcast only.) |
| March 11 | - Filing of Enforcement Bureau's final comments (optional). |

Respectfully submitted,



Jonathan D. Blake

Gregg H. Levy

Steven E. Fagell

Robert M. Sherman

Leah E. Pogoriler

COVINGTON & BURLING LLP

1201 Pennsylvania Avenue, N.W.

Washington, D.C. 20004-2401

(202) 662-6000

Counsel for NFL Enterprises LLC

January 7, 2009

CERTIFICATE OF SERVICE

I, Leah E. Pogoriler, certify that on this 7th day of January, 2009, I caused a true and correct copy of the foregoing NFL Enterprises LLC's Status Report to be served via electronic mail upon:

David H. Solomon
L. Andrew Tollin
Robert G. Kirk
J. Wade Lindsay
Wilkinson Barker Knauer, LLP
2300 N Street, NW, Suite 700
Washington, D.C. 20037

James L. Casserly
Michael H. Hammer
Megan A. Stull
Michael Hurwitz
Willkie Farr & Gallagher LLP
1875 K Street, N.W.
Washington, D.C. 20006

Michael P. Carroll
David B. Toscano
Antonio J. Perez-Marques
Jennifer A. Ain
Davis Polk & Wardwell
450 Lexington Avenue
New York, NY 10017

Counsel to Comcast Cable Communications, LLC

Kris Anne Monteith
Hillary S. DeNigro
Gary Schonman
Elizabeth Mumaw
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554



Leah E. Pogoriler