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

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JAN -5 2009

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

MEMORANDUM OPINION AND ORDER

Adopted: December 31, 2008 **Released: December 31, 2008**

By the Chief, Media Bureau:

1. On October 10, 2008, the Media Bureau issued a *Memorandum Opinion and Hearing Designation Order* ("HDO") in the above-captioned matter.[1] The HDO, among other things, referred certain program carriage disputes, including the above-captioned matter, to an Administrative Law Judge ("ALJ") to resolve factual disputes as to whether the defendant cable operators had discriminated against the complainant video programmers or required a financial interest in the complainant video programmer's programming as a condition for carriage in violation of the Commission's program carriage rules.[2] The HDO ordered the ALJ to make and return a recommended decision to the Commission within 60 days of the release date of the HDO, *i.e.*, by December 9, 2008. Unfortunately, the ALJ has not issued a recommended decision by the deadline but, instead, has set a date to begin a hearing more than three months past the HDO's deadline without indicating when a recommended decision will be released.[3]

2. On December 24, 2008, the Media Bureau issued a *Memorandum Opinion and Order* (the "*Dec. 24th MO&O*") finding that the ALJ exceeded his authority by setting a hearing date beyond the HDO's 60-day deadline for issuing a recommended decision.[4] In the *Dec. 24th MO&O*, the Media Bureau stated that the ALJ's limited authority to consider these matters extended through December 9, 2008.[5] The Media Bureau noted that this deadline has passed, and the ALJ's delegated authority over these hearing matters has thus expired under the terms of the HDO.[6] While the above-captioned matter was not included in the caption of the *Dec. 24th MO&O*, NFL Enterprises, LLC has filed a Motion for Clarification arguing that the logic and reasoning of that decision applies equally to the above-captioned matter.[7] We agree and therefore the Media

[1] *In the Matter of Herring Broadcasting Inc., d/b/a WealthTV, et al.*, Memorandum Opinion and Hearing Designation Order, DA 08-2269, MB Docket 08-214 (rel. Oct. 10, 2008) ("HDO"), *as modified by Erratum* (rel. Oct. 15, 2008).

[2] HDO, at ¶¶ 85, 89.

[3] *Herring Broadcasting, Inc. v. Time Warner Cable Inc. et al.*, Order, MB Docket No. 08-214, FCC 08M-50 (rel. Dec. 2, 2008).

[4] *In the Matter of Herring Broadcasting Inc., d/b/a WealthTV, et al.*, Memorandum Opinion and Order, DA 08-2805, MB Docket 08-214 (rel. Dec. 24, 2008), at ¶¶ 2, 14-16 ("*Dec. 24th MO&O*").

[5] *See id.*

[6] *See id.*

[7] NFL Enterprises LLC, Motion for Clarification, MB Docket No. 08-214, File No. CSR-7876-P (filed Dec. 29, 2008).

Bureau will proceed to resolve the above-captioned program carriage dispute without the benefit of a recommended decision from the ALJ.

3. *Accordingly,* ***IT IS ORDERED,*** *that the Hearing Designation Order for the above-captioned* matter has **EXPIRED,** the proceeding set for hearing before the Administrative Law Judge is **TERMINATED,** and the Media Bureau will proceed to resolve the above-captioned program carriage dispute.

4. **IT IS FURTHER ORDERED** that all parties to the above-captioned proceeding will be served with a copy of this Memorandum Opinion and Order by e-mail and by certified mail, return receipt requested.

5. **IT IS FURTHER ORDERED** that a copy of this Memorandum Opinion and Order or a summary thereof **SHALL BE PUBLISHED** in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Monica Shah Desai
Chief, Media Bureau