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
PROPOSED HEARING SCHEDULE

In response to the direction of the Chief Administrative Law Judge ("ALJ") earlier today, complainant NFL Enterprises LLC ("Enterprises") submits this proposed schedule in the above-captioned action.[1]

The Commission's order of January 27, 2009 recognizes two principles that should guide future proceedings in these consolidated matters. The first such principle is that "the factual determinations required to fairly adjudicate these matters are best resolved through hearings before an Administrative Law Judge."[2] The second principle is that "the presiding Administrative Law Judge shall issue recommended decisions and remedies, if any, to the

[1] As directed by the ALJ, counsel for Enterprises has consulted with counsel for Comcast, as well as counsel for the other Defendants in the consolidated proceedings, regarding the proposed schedule.

[2] *Herring Broadcasting, Inc. v. Time Warner Cable, et al.*, Order, MB Docket No. 08-214, FCC 09-4, ¶ 2 (rel. Jan. 27, 2009).

Commission *as expeditiously as possible, consistent with the mandates of fairness and due process*."[3] Enterprises' proposed schedule attempts to satisfy fairly both of these principles.

Enterprises continues to believe, as set forth in its Status Report submitted to the Presiding Administrative Law Judge on January 7, that the keys to expedition, consistent with fairness and due process, are (1) limiting the extensive discovery permitted by the Orders of December 2, 2008[4] and December 24, 2008[5] and (2) recognizing that, in the Hearing Designation Order,[6] the Media Bureau resolved numerous issues and made *prima facie* findings as to others.

In particular, Enterprises respectfully submits that there is no need for extensive document discovery or for depositions of fact-based witnesses. (Enterprises does 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.) 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.

Furthermore, as proposed in the Status Report, *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 Presiding ALJ could move forward to resolve Enterprises' Section 616 discrimination claim,

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[3] *Id.* (emphasis added).

[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).

[6] *Herring Broadcasting, Inc. v. Time Warner Cable Inc., et al.*, Mem. Op. & Hearing Designation Order, DA 08-2269, ¶ 76 (rel. Oct. 10, 2008).

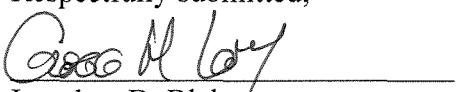
which turns on objective economic facts and data, not on witnesses' credibility or who said what to whom. If extensive document discovery and depositions of fact witnesses are going to go forward in any event, however, Enterprises will continue to seek prompt resolution of both of its claims.

In addition, Enterprises has no objection to discrete hearing schedules for the claims of the three complainants, and suggests that the principle of expedition may be served by such an approach. In that regard, Enterprises notes that it will be prepared to move forward in the first of any such bifurcated (or trifurcated) proceedings.

In response to the ALJ's request, Enterprises proposes the following schedule for its proceeding against Comcast. Consistent with the limitations on the scope of discovery discussed above, this schedule would ensure a fair and prospectively expeditious resolution of the claims asserted in Enterprises' complaint. This schedule assumes that direct testimony (other than expert testimony) will be filed in writing and that the only examination of fact witnesses permitted in the hearing will be cross-examination and re-direct.

February 6	-	Enterprises' expert report disclosed, along with documents relied upon by expert in reaching his opinions.
February 13	-	Comcast's expert reports disclosed, along with documents relied upon by experts in reaching their opinions.
February 24	-	Enterprises' expert deposed. Notices of depositions must precede depositions by five business days.
February 26-27	-	Comcast's experts deposed. Notices of depositions must precede depositions by five business days. This deadline constitutes the close of discovery.
February 27	-	Written direct testimony (other than expert testimony) and hearing exhibits exchanged by 12 noon. Trial briefs are not necessary and should not be accepted.
March 3	-	Hearing commencing at 9:30 a.m.
March 6	-	Record closes.
March 12	-	Filing of proposed findings and conclusions, including drafts of recommended decisions. (Enterprises and Comcast only.)
March 19	-	Filing of Enforcement Bureau's final comments (if any).

Respectfully submitted,



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January 28, 2009

CERTIFICATE OF SERVICE

I, Robert M. Sherman, certify that on this 28th day of January, 2009, I caused a true and correct copy of the foregoing NFL Enterprises LLC's Proposed Hearing Schedule to be submitted to the Chief Administrative Law Judge by electronic mail and to be served by electronic mail upon:

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