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

EXPEDITED MOTION TO COMPEL PRODUCTION OF DOCUMENTS

Pursuant to 47 C.F.R. § 1.325(a)(2), NFL Enterprises LLC ("Enterprises") respectfully requests an order compelling Comcast Cable Communications, LLC ("Comcast") to produce affiliation agreements responsive to Enterprises' requests. This relief is consistent with the Court's February 25 Order granting MASN's motion to compel comparable documents, and it is similarly consistent with the Court's direction that the parties engage in "tight, not expansive discovery, very focused discovery on a tight schedule."[1] Enterprises respectfully requests expedited consideration of this motion because Enterprises must file its expert's report on March 6, just three days from today.

BACKGROUND

Comcast's and Enterprises' discovery is now nearly complete, and the parties' agreed-upon discovery deadline passed on February 25. Some items of discovery

[1] Tr. of Pre-Hearing Conference at 104 (Nov. 25, 2008).

from both parties have stretched slightly past this deadline, as the parties have struggled to produce responsive documents on extremely tight deadlines.[2]

Nevertheless, with document discovery nearly complete, it is clear that there is a striking disparity in the scope of documents produced by the parties. Specifically, Comcast – the advocate of broad-ranging discovery – has produced about 15,400 pages. Enterprises, which has opposed discovery or sought very limited discovery, has produced over 97,300 pages of documents.[3]

Enterprises' production includes ***every*** affiliation agreement sought by Comcast during the parties' meet-and-confer, despite notice and/or consent requirements related to these agreements. That is, where an agreement or related document required notice to or consent of a third party prior to its production, Enterprises timely provided the requisite notice and/or timely received the requisite consent. Enterprises also has produced numerous other documents, such as highly sensitive spreadsheets that provide Comcast with sweeping detail on the NFL Network's advertising performance and other matters.

Comcast, by contrast, has imposed various unreasonable limitations on its discovery. If this were a traditional litigation, and not one in which each day's delay prejudices Enterprises' interest in swift resolution, Enterprises might seek broader relief from the Court on Comcast's discovery positions. Given the unique context of this

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[2] Enterprises has now produced the substantial majority of its responsive documents, and it will shortly complete its production. Comcast likewise has indicated that it has substantially completed its production but that it will produce additional documents.

[3] These disparities mirror similar disparities in the productions of the respective parties in the parties' New York litigation, where Comcast has produced about 8,500 documents, about a quarter of the nearly 31,000 documents − amounting to nearly a million pages − produced by Enterprises and its affiliates. The New York disparities are relevant to this matter because the parties have agreed that documents produced in the New York litigation may be used in this proceeding.

litigation, however, Enterprises limits this motion to compel to one category of documents: affiliation agreements.

Specifically, Enterprises asked Comcast on December 5, 2008 to produce the following two categories of affiliation agreements:

> [Request No. 1:] All agreements and draft agreements concerning any MVPD's carriage of any of [Comcast's] Affiliated Networks.
>
> [Request No. 4:] All agreements and draft agreements concerning [Comcast's] receipt of any payment, preferential arrangements, any other consideration or anything else of value, tangible or intangible (including programming concessions on other services), in connection with [Comcast's] carriage of any independent sports network on any tier or package other than the Sports Entertainment Package tier.[4]

These requests are comparable to the request addressed in the Court's order last week in the *Mid-Atlantic Sports Network* case, in which the Court ordered Comcast immediately to produce responsive agreements that Comcast had withheld on the basis of "non-disclosure agreements that are not relevant or related to [that] case."[5] Just as in the *MASN* case, Comcast has refused to produce responsive carriage agreements to Enterprises.

Comcast first stated on December 15, 2008 that it would need to obtain consent from its affiliation partners before producing these agreements. In the eleven weeks since that statement, Comcast does not appear to have sought that consent in any prompt manner, even as it repeatedly indicated that it would provide a prompt production

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[4] NFL Enterprises LLC's Document Requests, Sched. A, ¶¶ 1, 4 (Dec. 8, 2008) (attached at Exhibit A).

[5] *TCR Broad. Holding, L.L.P. v. Comcast Corp.*, Order, FCC 09M-19 (rel. Feb. 25, 2009) ("*MASN Order*") (attached at Exhibit B).

of these documents. Instead, this past weekend, Comcast indicated that it will not even be able to tell Enterprises the results of its efforts to seek consent until Wednesday, March 4, and yesterday Comcast indicated that it did not request consent from its counterparties until sometime "last week." Comcast also made clear that, if at that time any of its affiliation partners objected, it would refuse to produce the requested documents.

Enterprises delayed filing this motion in the hope that this dispute could be resolved between the parties without the need to involve the Court. However, Comcast has failed to respond adequately to Enterprises' concerns. For example, last evening Comcast produced Versus' and the Golf Channel's agreements with only one distributor. It maintains that it is in possession of other responsive agreements and that it will refuse to produce those agreements unless and until it obtains consent − only requested "last week" − from its counterparties. This delay is highly prejudicial to Enterprises, particularly in light of the fact that Enterprises must produce its expert report on March 6 − three days from today. Given Comcast's inexcusable delay, it will be virtually impossible at this stage for Enterprises' expert to conduct a comprehensive analysis of Comcast's affiliation agreements in time for the filing of his report.

Comcast also has advised Enterprises that it has narrowed unreasonably Enterprises' Request Number 4. Comcast has refused a meaningful response to this request, which seeks affiliation agreements under which Comcast as an MVPD has received consideration (other than a license to distribute programming) "in connection with [Comcast's] carriage of any independent sports network on any tier or package other than the Sports Entertainment Package tier." This Request requires Comcast either to admit that it carries *no* independent sports networks outside of the Sports Entertainment Package

− an admission that would confirm its discrimination against such networks − or to disclose the consideration, other than a license to distribute programming, that it obtained from independent programmers in exchange for that broader carriage. To avoid providing this information or documentation, Comcast has without justification limited its agreement to produce documents only if, in Comcast's view, (1) the programming does not "warrant[] broader distribution," (2) the additional consideration is not a "term[] typically found in Comcast's carriage agreements," and (3) the consideration is "*specifically* in exchange for not distributing the network solely on the Sports Entertainment Package."[6] These qualifications unreasonably eviscerate the request, since Comcast's litigation position is that all programming carried on a basic tier "warrants broad[] distribution," and indeed Comcast has admitted that there are no agreements covered by its distorted reformulation of Enterprises' request.

DISCUSSION

Document discovery is nearly complete. Enterprises' expert report is due in three days. Yet, although Comcast has been the proponent of broad-ranging discovery throughout this litigation, it has failed to produce affiliation agreements that are available to it and could be produced easily. This failure is particularly unjustified given that Comcast has known since December 5 of last year that these documents were requested, and it has been informing Enterprises about its consent obligations since December 15 without apparently meeting them in the interim. In this regard, Enterprises notes that it also was subject to notice and consent obligations with respect to certain agreements

[6] *See* Defendant's Responses & Objections to Complainant's Document Requests at 9 (objection to Request 4) (Dec. 15, 2008) (attached at Exhibit C) (emphasis added).

requested by Comcast. Enterprises has satisfied its notice and consent requirements and produced the agreements to Comcast.[7]

Comcast's refusal to provide this discovery on a timely basis is particularly unjustified because it was Comcast, and not Enterprises, that urged the Presiding Judge to order document discovery in the first instance. It is also significant that Comcast has, to date, provided Enterprises with only limited document discovery − only about 15,400 pages of documents, far less than the more than 97,300 pages that Enterprises has provided to Comcast (not including a supplemental production to be delivered to Comcast today).

The short amount of time remaining before the evidentiary hearing in this matter requires that the parties forego some broader discovery, but there is no basis for Comcast's refusal to produce a small and discrete set of agreements and draft agreements that are in its possession and that no doubt already have been reviewed for production.[8] Especially in light of its unwarranted delay in seeking consent, there also is no basis for Comcast's claim that it has been unable to obtain consents required under any non-disclosure agreements, including when Enterprises is subject to similar agreements and already has obtained the necessary consents.

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[7] Moreover, it is well-established that the existence of a private confidentiality agreement does not privilege a document against production in litigation. *See, e.g.*, *Covia P'ship v. River Parish Travel Ctr., Inc.*, No. 90-3023, 1991 WL 264549, at *1 (E.D. La. Dec. 4, 1991) ("Parties may not foreclose discovery by contracting privately for the confidentiality of documents."); *Grumman Aerospace Corp. v. Titanium Metals Corp.*, 91 F.R.D. 84, 87 (D.C.N.Y. 1981) ("confidentiality agreements . . . do not immunize [reports] or other materials from discovery").

[8] Enterprises understands, for example, that Comcast has produced twenty-eight agreements with regional sports networks in its litigation with the Mid-Atlantic Sports Network, some or all of which may be responsive to Enterprises' requests as well. *See* Comcast Corp., Opp. to Expedited Motion to Compel Production of Documents, *TCR Sports Broad. Holding, L.L.P. v. Comcast Corp.*, File No. CSR-8001-P, at 1 (Mar. 2, 2009).

Comcast has refused to inform Enterprises until Wednesday whether it will agree to produce any of the still-withheld but admittedly responsive agreements. Even if Comcast were to agree on Wednesday to produce all of the agreements it is withholding because it received consent to release them, it is unclear when after Wednesday Comcast would actually produce consented-to documents, and Comcast has made clear that it will refuse to produce unconsented-to documents. Comcast also has maintained that it will produce *no* agreements in response to Request Number 4. Enterprises' expert must consider these affiliation agreements in connection with the preparation of his report, due later this week, and Enterprises must use them to prepare its case for the hearing. Given these impending deadlines, Comcast's production of these agreements on Wednesday or later − or, in the case of Request Number 4, its failure to produce them at all − would be prejudicial.

The Commission held in the *Adelphia* proceeding that affiliation agreements are relevant to claims of discrimination in the distribution of video programming.[9] And, as the Presiding Judge held last week in the *MASN Order*, "[t]here appears to be no justification for Comcast to hold back on production" of these documents.[10]

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[9] *See Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Comms. Corp.*, Mem. Op. & Order, 21 FCC Rcd. 8203 (2006). *See also TCR Sports Broad. Holding, L.L.P. v. Time Warner Cable Inc.*, Order on Review, DA 08-2441, ¶¶ 43, 46 (rel. Oct. 30, 2008) (relying on data from Time Warner Cable's agreements with other networks in determining whether its treatment of the complainant was discriminatory).

[10] *MASN Order* at 1.

CONCLUSION

For the above reasons, Enterprises requests an order compelling Comcast promptly to produce: (1) the affiliation agreements that Versus and the Golf Channel have entered into with the ten largest MVPDs with which they have such agreements (measured by the number of each network's subscribers as of July 31, 2008); and (2) any affiliation agreements that Comcast, acting as an MVPD, has entered into with an independent sports network, in which Comcast has received some form of consideration other than a license to distribute the sports network in exchange for carriage on any tier or package other than the Sports Entertainment Package tier.

Respectfully submitted,

Robert M. Sherman

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Counsel for NFL Enterprises LLC

March 3, 2009

CERTIFICATE OF SERVICE

I, Robert M. Sherman, certify that on this 3rd day of March, 2009, I caused a true and correct copy of the foregoing Expedited Motion to Compel Production of Documents to be served via electronic mail upon:

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Robert M. Sherman

ROBERT M. SHERMAN

EXHIBIT A

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	)	
	)	

NFL ENTERPRISES LLC'S
DOCUMENT REQUESTS

PLEASE TAKE NOTICE that, pursuant to the *Procedural and Hearing Order*, FCC 08M-50, MB Docket No. 08-214 (rel. Dec. 2, 2008), Complainant NFL Enterprises LLC hereby requests that Defendant Comcast Cable Communications, LLC provide a written response and produce the documents described in Schedule A, attached, in accordance with the Definitions and Instructions contained in Schedule B, attached. The written response shall be delivered and the responsive documents produced at the offices of Covington & Burling LLP, 1201 Pennsylvania Avenue, N.W., Washington, D.C. 20004, on a rolling basis beginning no later than December 22, 2008, with all documents to be produced before a date to be agreed upon by the parties.

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December 5, 2008

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Schedule A
DOCUMENT REQUESTS

1. All agreements and draft agreements concerning any MVPD's carriage of any of the Affiliated Networks.

2. All documents reflecting your analysis of the NFL Network, its target audiences, value proposition, advertisers, programming, content, or ratings, including but not limited to comparisons of the NFL Network to any of the Affiliated Networks.

3. All agreements and draft agreements concerning your investment in, or your receipt of any equity or financial interest in, or your receipt of any direct or indirect value from the former or original owner of, any program service (including non-sports program services) carried on one or more of your cable systems.

4. All agreements and draft agreements concerning your receipt of any payment, preferential arrangements, any other consideration or anything else of value, tangible or intangible (including programming concessions on other services), in connection with your carriage of any independent sports network on any tier or package other than the Sports Entertainment Package tier.

5. All documents concerning your decisions regarding the tier or package placement on your cable systems of the NFL Network or any of the Affiliated Networks.

6. Documents sufficient to determine the effect of the tier placement of the NFL Network on the advertising revenues of any Affiliated Network, including advertising sold by the network or by any MVPD or its affiliate or subsidiary (including Comcast Spotlight), and any projections, reports, analyses, or other documents addressing such effect.

7. Documents reflecting any bid, or an analysis of any bid, by an Affiliated Network for programming for which the NFL Network was a competing bidder (other than the eight-game package) after January 1, 2006, including but not limited to documents reflecting projections (including ratings, advertising sales, and subscriber fee increases), analyses of potential competing bidders (including NFL Enterprises LLC or its affiliates), and draft and final agreements for acquisition of such programming.

8. Documents sufficient to identify, for each month of the relevant period, the number of your subscribers nationwide, the tiers or packages on which the NFL Network and the Affiliated Networks were carried, and the number of subscribers to each such tier or package (e.g., reports provided to programmers pursuant to carriage agreements that require this information).

9. Documents sufficient to identify, for your ten largest cable systems by number of subscribers, for each month of the relevant period, the direct and indirect fees charged to subscribers to your second-most highly penetrated digital tier and the fees charged to subscribers to your Sports Entertainment Package tier (and any other tier or package that substantially includes program services included in the Sports Entertainment Package tier).

Schedule B
DEFINITIONS AND INSTRUCTIONS[1]

1. "Affiliated Networks" means Versus and the Golf Channel, their predecessors (including the "Outdoor Life Network") and successors, any affiliated, related, or co-branded program services (including video-on-demand and other linear and non-linear program services), and any other program services in which Comcast holds a financial interest that compete with the NFL Network.

2. "Agreement" means any contract, partnership agreement, joint venture agreement, cooperation agreement, letter agreement, memorandum of understanding, or other contractual arrangement or non-contractual understanding, whether formal or informal and whether bilateral or multilateral.

3. "Analysis" means any study, evaluation, examination, investigation, assessment, presentation, discussion, appraisal, estimation, consideration, opinion, or prediction, whether formal or informal and whether shared with anyone other than the author or not.

4. "Comcast," "You," and "Your" mean Comcast Corp., Comcast Cable Communications, LLC, Comcast Cable Enterprises, LLC, the entities that operate the Affiliated Networks, and all of their present or former partners, directors, officers, employees, agents, attorneys, servants, parents, subsidiaries, affiliates and any other person or entity acting on their behalf or for their benefit.

5. "Concerning" means referring to, relating to, regarding, constituting, describing, discussing, analyzing, or evidencing.

6. "Document" means anything that contains information and which is in Your possession, custody or control. For purposes of these requests, the term "Document" has the broadest meaning permissible and includes, without limitation, emails, papers (whether handwritten or typed), memoranda, correspondence, notes, calendar entries, diaries, photographs, presentations, reports, receipts, invoices, ledger entries, microfilm, microfiche, and computer printouts, cards, tape recordings, disks, and other sources of electronically or magnetically maintained information. A Draft or non-identical copy is a separate document within the meaning of this term.

7. "Draft" means any earlier, preliminary, preparatory or tentative version of all or part of a Document, whether or not such Draft was superseded by a later Draft and whether or not the terms of the Draft are the same as or different from the terms of the final Document.

8. "Eight-Game Package" means the package of eight live National Football League games that the NFL Network carried beginning in the 2006-2007 football season and the package of eight live National Football League games that you sought to license for an Affiliated Network in December 2005.

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[1] The definitions apply regardless of whether the defined term is capitalized in a request.

9. "Independent Sports Network" means any program service in which no MVPD holds a financial interest and that provides substantial programming relating to sporting events.

10. "Indirect Fees" mean any fees charged in connection with a subscriber's decision to subscribe to a particular tier, including but not limited to the cost to purchase any tiers of service that are required for the subscriber to be eligible to subscribe to the chosen tier.

11. "NFL Network" means the program service known as the NFL Network that you carry on your cable systems pursuant to the August 11, 2004 letter agreement between you and NFL Enterprises LLC, any non-linear content (including video on demand content) associated with that program service, and any content that is, was, or was at any time contemplated to be included in that program service's schedule.

12. "Multichannel Video Programming Distributor" and "MVPD" have the meaning described in 47 U.S.C. § 522(13). For the avoidance of doubt, all Comcast entities that qualify as MVPDs under 47 U.S.C. § 522(13) are included.

13. "Person" means any natural person, including (a) an employee or former employee, (b) any business entity including corporations, partnerships, proprietorships, groups, associations, or organizations, (c) any governmental entity and any department, agency, bureau, or other subdivision thereof, and (d) any agent or former agent of any of the foregoing.

14. "Value Proposition" means the term "value proposition," as that term is used in your Answer in this proceeding and in exhibits thereto.

15. Unless otherwise specifically set forth herein, this document request calls for the production of all documents in your possession, custody, or control that were authored, compiled, generated, possessed, prepared, read, received, recorded, referred to, reviewed, sent to or by, transmitted, utilized, or written by or on behalf of you, in the period commencing with January 1, 2004 and continuing through the date of your response. (This period is the "Relevant Period.")

16. The terms "and" and "or" shall be construed both disjunctively and conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope. The use of the singular form of any word includes the plural and vice versa.

17. "Including" shall be construed as "includes, without limitation" or "including, without limitation," so that each request shall be construed broadly, rather than narrowly, to bring within the scope of each request all responses that might otherwise be construed to be outside its scope.

18. In producing documents, all documents that are physically attached to each other shall be produced in that form. Documents that are segregated or separated from other documents, whether by inclusion in binders, files or sub-files, or by the use of dividers, tabs or any other method, shall be produced in that form. Documents shall be produced in the order in which they were maintained.

19. You are requested to promptly produce all responsive documents discovered, created, or that come into your possession at any time before the conclusion of this proceeding, regardless of whether the documents were included in your initial production.

20. If any document or any portion thereof responsive to any document request is withheld from production, including on the grounds of attorney-client privilege or the work-product doctrine, state: (a) the nature of the privilege or other basis for withholding the document, including information sufficient to evaluate the claim; (b) the type of document; (c) the general subject matter of the document; (d) the date of the document; and (e) such other information sufficient to identify the document, including, as appropriate, (i) the author of the document; (ii) the addressee(s) of the document and any other recipient(s) shown in the document; and (iii) when not apparent, the relationship of the author, addressee(s), and recipient(s) to each other. You shall supply this information at the same time you produce the documents responsive to these requests, or within a reasonable time thereafter.

21. If a document contains both privileged and non-privileged material, you shall disclose the non-privileged material to the fullest extent possible without thereby disclosing the privileged material. If a privilege is asserted with regard to part of the material contained in a document, you shall clearly indicate the portions for which the privilege is claimed.

22. If any document or any portion thereof responsive to any document request has been discarded, destroyed or redacted in whole or in part, state: (a) the date of the discard, destruction or redaction; (b) the reason for the discard, destruction or redaction; (c) the person who discarded, destroyed or redacted the document; and (d) if discarded or completely destroyed, the files where the document was maintained prior to its destruction.

23. If you object to any request below or any part thereof, you shall identify the request or part thereof to which you object, state with specificity all grounds for the objection, and respond to any portion of the request to which you do not object.

24. If you object to any request below on the grounds that the request is ambiguous, overly broad, or unduly burdensome, you shall produce documents responsive to that request as narrowed to the least extent necessary, in your judgment, to render that request not ambiguous, overly broad, or unduly burdensome, and you shall state specifically the extent to which you have narrowed that request for purposes of your response.

CERTIFICATE OF SERVICE

I, Robert M. Sherman, certify that on this 5th day of December, 2008, I caused a true and correct copy of the foregoing Document Requests to be served via electronic mail upon:

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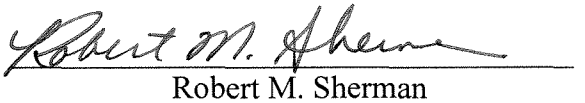


Robert M. Sherman

EXHIBIT B

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

FCC 09M-19

In the Matter of	)	MB Docket No. 08-214
	)	
TCR Sports Broadcasting Holding, L.L.P.,	)	File No. CSR-8001-P
d/b/a Mid-Atlantic Sports Network,	)	
Complainant	)	
v.	)	
Comcast Corporation,	)	
Defendant	)	

ORDER

Issued: February 25, 2009 Released: February 25, 2009

On February 25, 2009, MASN filed Expedited Motion to Compel Production of Documents. A document request of MASN for resolution are Affiliate Agreements for sports programming entered into by Comcast with other program providers. MASN asserts that Comcast has balked as to those Agreements which contain non-disclosure provisions requiring consent of the parties. Production has been made of several of those Agreements that were not conditioned on consent, and also some Agreements for which consent was obtained.

Now there are detailed Protective Orders prepared by the parties that have been signed by the Presiding Judge. Affiliate Agreements sought by MASN are relevant to the issues for trial. *Cf. Adelphia, Order On Review,* 21 FCC Rcd 8203 (2006). There appears to be no justification for Comcast to hold back on production, except non-disclosure agreements that are not relevant or related to this case. In light of operative Protective Orders and the immediate need of MASN for relevant evidence to prepare for trial, unless there are other convincing arguments to be made by Comcast opposing production, prompt production of Affiliate Agreements must be made.

Ruling

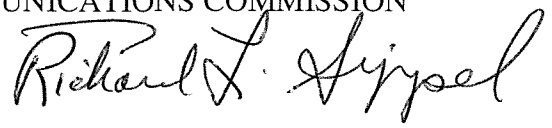
Accordingly, IT IS ORDERED that Comcast produce for MASN by **3p.m. February 26, 2009,** the "Affiliate Agreements" of MASN's Second Request, to wit:

> *All affiliate agreements, contracts, and related documents for Comcast's Carriage of regional sports networks (both affiliated and unaffiliated) in the last ten years, including but not limited to documents sufficient to show the expiration dates of these agreements and contracts, the per-subscriber rates associated with these agreements and contracts, and the quantity of live sports programming telecast on each network for each year covered.*

(Emphasis Added.)

IT IS FURTHER ORDERED that any Comcast opposition or request for other relief relating to this *Order,* must be filed **by 11a.m. February 26, 2009.**

FEDERAL COMMUNICATIONS COMMISSION[1]



Richard L. Sippel
Chief Administrative Law Judge

[1] Courtesy copies provided to counsel by email on date of the *Order's* issuance.

EXHIBIT C

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

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

DEFENDANT'S RESPONSES AND OBJECTIONS TO COMPLAINANT'S DOCUMENT REQUESTS

Pursuant to 47 C.F.R. § 1.325(a)(2), Comcast Cable Communications, LLC ("Comcast"), makes the following responses and objections to NFL Enterprises LLC's Documents Requests, served December 5, 2008 (the "Requests" and each request individually, a "Request"). The responses and objections contained herein, and any information produced pursuant to the Requests, are made without in any way waiving or intending to waive, but on the contrary reserving and intending to reserve:

1. The right to object on grounds of competency, relevance, materiality, privilege, and admissibility as evidence for any purpose of any of the information produced hereunder or the subject matter thereof, including objections that any information requested is not reasonably calculated to lead to the discovery of admissible evidence.

2. The right to object on any ground to the use of information produced hereunder or the subject matter thereof at any trial or hearing in this matter or in any related or subsequent action or proceeding.

3. The right to object on any ground at any time to a demand for further response.

4. The right at any time to revise, supplement, correct, or add to these objections and responses, and to revise, supplement, correct, or add to any production of information made pursuant to future responses.

GENERAL OBJECTIONS

1. Comcast objects to the Requests to the extent that they demand documents protected from disclosure by the attorney-client privilege, the work product doctrine, or any other legally recognized privilege and/or immunity. To the extent that such documents are inadvertently produced in response to the Requests, the production of such documents shall not constitute a waiver of Comcast's right to assert the applicability of any privilege or immunity to the documents, and any such document will be subject to return on demand.

2. Comcast objects to the Requests to the extent that they are overly broad and unduly burdensome.

3. Comcast objects to the Requests to the extent that they demand documents that are neither relevant to the claims or defenses of either party nor reasonably calculated to lead to the discovery of admissible evidence.

4. Comcast objects to the Requests to the extent that they are vague, ambiguous and/or incomprehensible.

5. Comcast objects to the Requests to the extent that they call for documents that are not within Comcast's possession, custody or control, or are equally available to NFL Enterprises LLC (the "NFL").

6. Comcast objects to the Requests to the extent that they demand documents that contain confidential information, including trade secrets and other competitively sensitive business or commercial information, prior to the entry of an appropriate protective order by the Presiding Judge. Any offer by Comcast to produce documents containing confidential information is contingent on the entry of such an order.

7. Comcast objects to the Requests to the extent that they call for the production of documents that contain confidential information, including trade secrets and other competitively sensitive business or commercial information, the probative value of which is outweighed by Comcast's interest in preserving its confidentiality or the disclosure of which would result in the violation of contractual obligations to third parties.

8. Comcast objects to the Requests to the extent that they seek to impose discovery obligations on Comcast broader than, or inconsistent with, those set forth in the rules and regulations of the Federal Communications Commission ("FCC").

9. Any statement by Comcast to the effect that it will produce documents responsive to any individual Request should not be construed to mean that any responsive documents exist.

10. All General Objections apply to each individual Request without reiteration in the specific response thereto. Reference to a General Objection in a response is not intended to be, and shall not be deemed to be, a waiver of applicability of that or any other General Objection to any Request.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

A. Comcast objects to the "Definitions and Instructions" to the extent that they seek to impose obligations beyond those imposed the applicable laws, rules, regulations and orders. Any use of a definition contained in the Requests by Comcast for the purposes of responding to the Request does not constitute a waiver of this or any other objection.

B. Comcast objects to Definition No. 1 as overly broad, unduly burdensome, vague and ambiguous. Comcast will construe "Affiliated Networks" to mean Versus (formerly known as the "Outdoor Life Network") and the Golf Channel.

C. Comcast objects to Definitions No. 2 and 3 as vague and ambiguous. Comcast will accord those terms their ordinary meaning.

D. Comcast objects to the definition of "Comcast," "You," and "Your" in Definition No. 4 as overly broad and unduly burdensome. Comcast also objects to the reference to "Comcast Cable Enterprises, LLC" in Definition No. 4 on the ground that Comcast has no affiliate with that name. Comcast further objects to the definition of "Comcast," "You," and "Your" to the extent that the definition purports or may be construed to include outside counsel for Comcast in this case.

E. Comcast objects to Definition No. 6 to the extent it that it purports to impose obligations to produce information beyond the scope of the examination permitted by 47 CFR § 1.311(b).

F. Comcast objects to Definitions No. 9 and 11 as vague and ambiguous. Comcast will give those terms their proper meanings, as set forth in Comcast's pleadings. See Answer ¶¶ 71-74.

G. Comcast further objects to the clause "and any content that is, was, or was at any time contemplated to be included in that program service's schedule" in Definition 11 as vague, ambiguous, overly broad, unduly burdensome and beyond Comcast's ability to ascertain.

H. Comcast objects to Definition No. 13 as internally inconsistent, and therefore incomprehensible, because categories (b) and (c) are not "natural persons."

I. Comcast objects to Instruction No. 15 to the extent that it requires Comcast to provide "all documents . . . that were authored, compiled, generated, possessed, prepared, read, received, recorded, referred to, reviewed, sent to or by, transmitted, utilized, or written by or on behalf of you" on the grounds that the Instruction calls for information that may be protected from disclosure by the attorney-client privilege, the work product doctrine, or any other legally recognized privilege and/or immunity.

J. Comcast objects to Instruction No. 18 on the grounds that it intends to produce documents in electronic form.

K. Comcast objects to Instruction No. 19 to the extent it is inconsistent with the Presiding Judge's Procedural and Hearing Order issued on December 1, 2008, or any other applicable law, rule, regulations or order.

L. Comcast objects to Instruction No. 20 to the extent that it purports to impose obligations beyond those imposed under the applicable laws, rules, regulations and orders.

M. Comcast objects to Instruction No. 22 to the extent that it purports to impose a burden inconsistent with the applicable laws, rules, regulations and orders.

N. All Objections to Definitions and Instructions apply to each individual Request without reiteration in the response thereto. Reference to the Objections to Definitions and Instructions in a response is not intended to be, and shall not be deemed to be, a waiver of applicability of that or any other Objection to Definitions and Instructions to any Request.

SPECIFIC RESPONSES AND OBJECTIONS

REQUEST NO. 1: All agreements and draft agreements concerning any MVPD's carriage of any of the Affiliated Networks.

OBJECTIONS AND RESPONSE TO REQUEST NO. 1: Comcast objects to Request No. 1 as overly broad, unduly burdensome, vague and ambiguous. Comcast also objects to the Request to the extent that it demands draft agreements. Comcast further objects to the Request to the extent it demands documents relating to carriage by "any MVPD," including those with relatively small numbers of subscribers. In addition, Comcast objects to the Request to the extent that it demands documents protected from disclosure by the attorney-client privilege, the work product doctrine, or any other legally recognized privilege and/or immunity. Comcast further objects to the Request on the ground it

demands confidential documents, including documents as to which Comcast has confidentiality obligations to third parties.

Subject to, and without waiving, these specific objections, the General Objections and the Objections to Definitions and Instructions, Comcast will conduct a reasonable search and produce responsive carriage agreements by the eight largest MVPDs, contingent on the consent, to the extent required, of third parties.

REQUEST NO. 2: All documents reflecting your analysis of the NFL Network, its target audiences, value proposition, advertisers, programming, content, or ratings, including but not limited to comparisons of the NFL Network to any of the Affiliated Networks.

OBJECTIONS AND RESPONSE TO REQUEST NO. 2: Comcast objects to Request No. 2 as overly broad, unduly burdensome, vague and ambiguous. Comcast also objects to the Request to the extent that it demands documents protected from disclosure by the attorney-client privilege, the work product doctrine, or any other legally recognized privilege and/or immunity.

Subject to, and without waiving, these specific objections, the General Objections and the Objections to Definitions and Instructions, Comcast will conduct a reasonable search and produce responsive documents.

REQUEST NO. 3: All agreements and draft agreements concerning your investment in, or your receipt of any equity or financial interest in, or your receipt of any direct or indirect value from the former or original owner of, any program service (including non-sports program services) carried on one or more of your cable systems.

OBJECTIONS AND RESPONSE TO REQUEST NO. 3: Comcast objects to Request No. 3 as overly broad, unduly burdensome, vague and

ambiguous. Comcast also objects to this Request to the extent that it demands documents that are neither relevant to the claims or defenses of either party nor reasonably calculated to lead to the discovery of admissible evidence. Comcast further objects to the Request to the extent that it demands draft agreements. In addition, Comcast objects to the Request to the extent that it demands documents protected from disclosure by the attorney-client privilege, the work product doctrine, or any other legally recognized privilege and/or immunity.

Subject to, and without waiving, these specific objections, the General Objections and the Objections to Definitions and Instructions, Comcast will conduct a reasonable search and produce responsive agreements concerning programming networks not controlled or operated by Comcast in which Comcast has an ownership interest.

REQUEST NO. 4: All agreements and draft agreements concerning your receipt of any payment, preferential arrangements, any other consideration or anything else of value, tangible or intangible (including programming concessions on other services), in connection with your carriage of any independent sports network on any tier or package other than the Sports Entertainment Package tier.

OBJECTIONS AND RESPONSE TO REQUEST NO. 4: Comcast objects to Request No. 4 as overly broad, unduly burdensome, vague and ambiguous. Comcast also objects to this Request to the extent that it demands documents that are neither relevant to the claims or defenses of either party nor reasonably calculated to lead to the discovery of admissible evidence. Comcast further objects to the Request to the extent that it demands draft agreements. In addition, Comcast objects to the Request to the extent that it demands documents protected from disclosure by the attorney-client privilege, the work product

doctrine, or any other legally recognized privilege and/or immunity. Comcast further objects to the Request on the ground it demands confidential documents, including documents as to which Comcast has confidentiality obligations to third parties.

Subject to, and without waiving, these specific objections, the General Objections and the Objections to Definitions and Instructions, Comcast will conduct a reasonable search and produce – contingent on the consent, to the extent required, of third parties – responsive carriage agreements for any Independent Sports Network for which Comcast has received consideration (other than a license to distribute programming warranting broader distribution and other terms typically found in Comcast's carriage agreements) specifically in exchange for not distributing the network solely on the Sports Entertainment Package.

REQUEST NO. 5: All documents concerning your decisions regarding the tier or package placement on your cable systems of the NFL Network or any of the Affiliated Networks.

OBJECTIONS AND RESPONSE TO REQUEST NO. 5: Comcast objects to Request No. 5 as overly broad, unduly burdensome, vague and ambiguous. Comcast also objects to this Request to the extent that it demands documents that are neither relevant to the claims or defenses of either party nor reasonably calculated to lead to the discovery of admissible evidence. Comcast further objects to the Request to the extent that it demands documents protected from disclosure by the attorney-client privilege, the work product doctrine, or any other legally recognized privilege and/or immunity.

Subject to, and without waiving, these specific objections, the General Objections and the Objections to Definitions and Instructions, Comcast will conduct a reasonable search and produce responsive documents.

REQUEST NO. 6: Documents sufficient to determine the effect of the tier placement of the NFL Network on the advertising revenues of any Affiliated Network, including advertising sold by the network or by any MVPD or its affiliate or subsidiary (including Comcast Spotlight), and any projections, reports, analyses, or other documents addressing such effect.

OBJECTIONS AND RESPONSE TO REQUEST NO. 6: Comcast objects to the assumptions in Request No. 6 that: (i) the tier placement of the NFL Network had or has an "effect" on the advertising revenues of Versus or the Golf Channel (or any other Comcast network); and (ii) that Comcast possesses, has custody of, or controls documents sufficient to "determine" any such "effect." Comcast also objects to Request No. 6 as overly broad, unduly burdensome, vague and ambiguous. Comcast further objects to the Request to the extent that it demands documents protected from disclosure by the attorney-client privilege, the work product doctrine, or any other legally recognized privilege and/or immunity.

Subject to, and without waiving, these specific objections, the General Objections and the Objections to Definitions and Instructions, Comcast will conduct a reasonable search and produce documents, if any, concerning the relationship, if any, between the tier placement of the NFL Network and the advertising revenues of Versus or the Golf Channel.

REQUEST NO. 7: Documents reflecting any bid, or an analysis of any bid, by an Affiliated Network for programming for which the NFL Network was a competing bidder (other than the eight game package) after January 1, 2006, including but not limited to documents reflecting projections (including ratings, advertising sales, and subscriber fee increases), analyses of potential competing

bidders (including NFL Enterprises LLC or its affiliates), and draft and final agreements for acquisition of such programming.

OBJECTIONS AND RESPONSE TO REQUEST NO. 7: Comcast objects to Request No. 7 as overly broad, unduly burdensome, vague and ambiguous. Comcast also objects to the Request to the extent that it demands documents protected from disclosure by the attorney-client privilege, the work product doctrine, or any other legally recognized privilege and/or immunity. Comcast further objects to the Request on the ground it demands confidential documents, including documents as to which Comcast has confidentiality obligations to third parties.

Subject to, and without waiving, these specific objections, the General Objections and the Objections to Definitions and Instructions, Comcast will conduct a reasonable search and produce – contingent on the consent, to the extent required, of third parties – documents reflecting bids, or analysis of bids, by Versus or the Golf Channel for programming for which the NFL Network also was a bidder (other than the Eight Game Package) after January 1, 2006.

REQUEST NO. 8: Documents sufficient to identify, for each month of the relevant period, the number of your subscribers nationwide, the tiers or packages on which the NFL Network and the Affiliated Networks were carried, and the number of subscribers to each such tier or package (e.g., reports provided to programmers pursuant to carriage agreements that require this information).

OBJECTIONS AND RESPONSE TO REQUEST NO. 8: Comcast objects to the assumption in this Request that at any particular point in time a network is carried on the same tier or package across all of Comcast's cable systems. Comcast also objects to Request No. 8 as overly broad, unduly

burdensome, vague and ambiguous. Comcast further objects to the extent that it already has provided information to the NFL concerning the number of subscribers to the NFL Network.

Subject to, and without waiving, these specific objections, the General Objections and the Objections to Definitions and Instructions, Comcast will produce, based on a reasonable search, documents showing the total number of subscribers to Versus and Golf, respectively, across all of Comcast's cable systems on a periodic basis over the relevant period.

REQUEST NO. 9: Documents sufficient to identify, for your ten largest cable systems by number of subscribers, for each month of the relevant period, the direct and indirect fees charged to subscribers to your second-most highly penetrated digital tier and the fees charged to subscribers to your Sports Entertainment Package tier (and any other tier or package that substantially includes program services included in the Sports Entertainment Package tier).

OBJECTIONS AND RESPONSE TO REQUEST NO. 9: Comcast objects to Request No. 9 as overly broad, unduly burdensome, vague and ambiguous.

Subject to, and without waiving, these specific objections, the General Objections and the Objections to Definitions and Instructions, Comcast will produce, based on a reasonable search, documents showing the cost to subscribers in its ten largest cable systems of its D2 tier and its Sports Entertainment Package over the relevant period.

Dated: New York, New York
December 15, 2008

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CERTIFICATE OF SERVICE

I, David B. Toscano, hereby certify that on December 15, 2008, I served a true and correct copy of Defendant's Responses and Objections to Complainant's Document Requests on the following individuals by electronic mail:

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