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Federal Communications Commission
Office of the Secretary

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)	

DIRECT TESTIMONY OF MADISON BOND

1. My name is Madison Bond. My business address is One Comcast Center, Philadelphia, Pennsylvania 19103.
2. I am the Executive Vice President of Content Acquisition at Comcast Cable Communications, LLC (“Comcast Cable” and, together with its affiliates, “Comcast”). I have held this position at all times relevant to my testimony below, although my title was Executive Vice President of Programming for some portion of this period. The statements made herein are based on personal knowledge or information I gained during my employment by Comcast, and my review of certain documents.
3. In my position at Comcast Cable, I lead the team responsible for reviewing carriage proposals and negotiating carriage agreements with programming networks. When selecting among the networks and would-be networks seeking distribution agreements, Comcast Cable (and in my experience, every other multichannel video programming distributor (“MVPD”)) must balance the costs and benefits associated with a number of variables. Carriage negotiations are highly complex, and are

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typically informed by a wide range of considerations relating to the overall value proposition of a particular service, including, among other things: an understanding of the nature of the programming involved, its target demographics, its likely appeal to consumers, its similarities and differences from other programming available to the MVPD, its cost, and the value of any other rights or content provided with the service.

4. We apply these variables to all networks that we review for Comcast Cable, regardless of whether they are affiliated with Comcast. In general, we look for the best deal for Comcast Cable and our customers: the best programming (as determined by current or potential consumer demand), at the best price (for Comcast Cable and its customers), at the right level of distribution, with the least risk (either of losing money and time or losing a competitive advantage).

5. I understand that the National Football League (together with its affiliates, including NFL Enterprises LLC, the "NFL") is claiming that Comcast Cable has discriminated against NFL Network ("NFLN") because Comcast Cable does not distribute NFLN as broadly as Versus or Golf Channel, networks owned by Comcast that charge less than half of NFLN's affiliate fee. I reject the claim that there has been any discrimination against the NFLN. To the contrary, Comcast accommodated the NFLN in 2004 when it had no live game programming and little market appeal by agreeing to distribute the network on Comcast's Digital Plus ("D2") service tier for at least two years. It was only after the NFL sought to increase the price of its network by more than 350% that Comcast exercised the contractual right that the NFL had negotiated and agreed to, and moved the network to a sports tier. Comcast would have been happy to

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carry NFLN on a more highly penetrated tier at a low price as part of a long-term deal, or on the sports tier at its high price. NFL wanted both: a highly penetrated tier and a high price (among the highest rates in cable television). This is, in my view, the reason the NFL has not gained broad distribution from Comcast or other distributors.

6. I also understand that the NFL is now seeking carriage for the NFLN on Comcast Cable systems on terms comparable to those of Versus and Golf Channel. But the price of Versus and Golf Channel is less than half the surcharge price for NFLN, and therefore if the NFL were truly interested in carriage on comparable terms, it should reduce its price a comparable level [REDACTED]. The NFL made no offer for distribution at this price level before choosing instead to file this action. Even this price would be higher – in most cases, much higher – than what any other professional league charges for its channel.

Negotiation of the 2004 Agreements

7. In 2003, the NFL approached Comcast proposing that Comcast offer the new NFLN to its cable customers.

8. I was involved in the negotiations prompted by the NFL's approach, which ultimately resulted in a deal memorialized in two letter agreements executed on August 11, 2004: a letter agreement governing future negotiations between Comcast and the NFL with respect to certain specified packages of NFL games (the "Negotiation Agreement"), and a letter agreement governing carriage of NFLN on Comcast cable systems (the "Affiliation Agreement" and, together with the Negotiation Agreement, the "2004 Agreements"). I executed both of those agreements on behalf of Comcast.

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9. At the time that Comcast and the NFL were negotiating carriage terms for NFLN, Comcast, like other cable operators, had increasing concerns about the soaring costs of sports programming, which were then, as now, one of the biggest drivers of cable price increases.

10. It was a fundamental part of our agreement that, if the NFL ultimately decided not to grant Comcast the rights to one of the NFL games packages (whether an out-of-market package or a package of games for national telecast by a Comcast network), then Comcast would be permitted to determine to what extent it would distribute NFLN to subscribers. {Early in our negotiations, on October 28, 2003, I received a draft of the Affiliation Agreement from Arturo Marquez, Vice President, Affiliate Sales of NFLN, which proposed that Comcast carry NFLN on D2 tier and provided that, if the NFL “[did] not offer to [Comcast] a substantial package of live out-of-market NFL games . . . by July 31, 2006, [Comcast] may terminate carriage of [NFLN].” We felt that it would be better for the NFL, for Comcast, and for our customers, if, instead of terminating carriage of NFLN, we could move it to a sports tier, and the NFL agreed. Thus, subsequent drafts of the Negotiation Agreement and Affiliation Agreement, including the final 2004 Agreements, provided that, in the event that Comcast did not reach an agreement with the NFL by July 31, 2006 for an “Out-of-Market Package” or “Additional Cable Package,” Comcast could “distribute [NFLN] . . . as part of any tier, package, or level of service (including a Sports Tier).” Absent the freedom to move NFLN to a sports tier if the parties did not reach an agreement granting

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Comcast the right to carry the NFL Sunday Ticket or telecast certain live NFL games on a Comcast-owned network, Comcast would not have entered into the 2004 Agreements.

Negotiations for Games Rights for Versus

11. Although my involvement in Versus's negotiations with the NFL to obtain a package of game rights was limited, I recall that as a condition of licensing the games to Versus, the NFL insisted on obtaining increased distribution and other revised terms for the NFLN, which, if the deal were successful, would not carry live regular-season NFL games. I regarded these terms sought by NFL as unattractive on a stand-alone basis, and a negative even in the context of the broader transaction. To my knowledge, Comcast's openness to discuss this demand by the NFL was a function solely of the NFL's insistence on NFLN distribution as a condition of licensing valuable game rights.

12. It was likewise an anticipated condition of the licensing deal that Comcast Cable would commit to distribute Versus broadly. In that regard, I understand that Comcast Cable would have been protected by a Most-Favored-Nations ("MFN") provision that would have ensured that Comcast Cable paid a market rate for Versus and distributed Versus subject to other market-clearing terms. Unfortunately, however, the negotiations were not successful and the NFL kept the games for the NFLN.

2006 Offer to Add Games to NFLN

13. On or about July 26, 2006, I spoke by telephone with Adam Shaw, Senior Vice President of Distribution of NFLN, regarding a letter dated from June 15, 2006 that Comcast received from the NFL, which offered to allow Comcast to make available to its subscribers for a surcharge the package of live NFL games that had been awarded to the

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NFLN. {During that call and on prior occasions, we discussed the possibility of a long-term extension of the Affiliation Agreement. I expressed concern that, if Comcast added live games to NFLN (which Comcast's customers would then expect to continue receiving), Comcast would weaken its position in negotiations over its payment for NFLN after the expiration of the existing Affiliation Agreement (which provides "price protection" to Comcast through its agreed License Payment and [REDACTED] cap on the surcharge for Additional Programming). Mr. Shaw responded, in substance, that Comcast would preserve its bargaining position because Comcast would still possess the right to place NFLN solely on a sports tier. I repeated to Mr. Shaw that, in substance, his position was that, even if Comcast accepted the offer to add live games to NFLN, then Comcast would preserve its bargaining position vis-à-vis NFLN through Comcast's right to place the network solely on a sports tier. Mr. Shaw did not take exception to my statements, or claim that Comcast would be prohibited from placing NFLN on a sports tier. }

14. {On or about July 27, 2006, I spoke by telephone again with Mr. Shaw and with David Proper, Senior Counsel, National Football League. During that call, I stated several times that Comcast would retain the right to place NFLN solely on a sports tier even if Comcast accepted the offer to add games to NFLN. Mr. Shaw and Mr. Proper never took exception to my statements, or claimed that Comcast would be prohibited from placing NFLN on a sports tier.}

15. {On August 28, 2006, I sent an email to Mr. Shaw regarding a press story in which an NFL spokesperson was reported as having stated that no distributor has

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tiering rights for NFLN. In the email, I stated that “[a]s we discussed prior to [Comcast’s] acceptance of the surcharge, our contract allows tiering, and it was the predicate of our acceptance of the surcharge.” In his response, Mr. Shaw suggested that the comments did not relate to Comcast (“We’re sorry that you felt that [the spokesperson’s] response in any way implicated our current contract with Comcast”), and that the statements were intended to convey that NFLN “is not currently tiered by any MSO [Multiple Service Operator], and ... [the NFL] will not grant any MSO the right to do so in the future.”}

16. {Under the Affiliation Agreement, Comcast agreed to pay a flat license fee for NFLN, regardless of the number of subscribers that received NFLN, which meant that the net effective rate per subscriber declined as the number of households receiving the service from Comcast increased. (The compensation would change to a per-subscriber rate if Comcast moved NFLN to a lesser-penetrated tier than D2.) As of the end of August 2006, Comcast’s net effective rate for NFLN was approximately [REDACTED] }
With the addition of the [REDACTED], Comcast’s license fee per subscriber for NFLN effectively rose by over 350%. When applied to Comcast’s D2 subscriber base, the surcharge amounted to a price increase of roughly \$50 million per year, or \$150 million over the remaining term of the agreement.

The NFL’s Refusal to Honor Comcast's Contractual Rights

17. On or about September 26, 2006, I spoke by telephone with Mr. Shaw and Mr. Proper. I informed them that Comcast planned to launch NFLN as part of a sports tier on certain cable systems recently acquired from Time Warner (systems that had not

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been carrying NFLN). Neither Mr. Shaw nor Mr. Proper took exception to my statements, claimed that Comcast would be prohibited from placing NFLN on a sports tier, or otherwise objected to the proposed launch.}

18. Beginning as early as October 2006, Comcast tried to exercise its right to distribute NFLN on a sports tier to subscribers who choose to receive the tier on those recently acquired cable systems. {Specifically, Comcast employees sent launch requests to the NFL requesting that they technologically enable Comcast's distribution of NFLN. Each such request, however, was refused by the NFL.} That same month, the NFL brought a breach-of-contract suit in New York state court, seeking to enforce the 2004 Agreements and claiming that Comcast lacked the contractual right to carry NFLN on a sports tier.

19. After the trial judge granted summary judgment in the New York litigation to Comcast in May 2007, Comcast promptly, after appropriate notice to its subscribers, exercised its contractual (and then judicially confirmed right) to move NFLN to a sports tier. Although it continues to be carried on D2 in a handful of systems, NFLN is carried predominantly on the sports tier and is currently available to approximately 24 million of Comcast's 24.4 million customers. Comcast customers in most of Comcast's 600+ systems can view NFLN merely by subscribing to Comcast's sports tier, which is generally priced at \$5-7 per month (depending on the region) for customers who subscribe to expanded basic.

20. Comcast has offered promotions (with most systems running at least one promotion during the past 18 months) that make the sports tier available for \$1.99 per

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month, or even free, and customers who choose to subscribe to the sports tier may cancel that service at any time. Comcast's sports tier currently has approximately [REDACTED] subscribers. NFLN is also distributed to approximately [REDACTED] subscribers on other digital levels of service.

21. After Comcast shifted NFLN to the sports tier, the NFL engaged in an extensive marketing campaign that urged NFL fans to cancel their cable service from Comcast and other cable companies (most of which do not carry NFLN at all) and to switch to competing MVPDs that carry NFLN on highly penetrated tiers.

Comcast Cable's Decision to Tier NFLN

22. Comcast Cable made the decision to move the NFLN to a sports tier because, among other reasons, (a) we had the clear contractual right to do so, (b) our exercise of that right drove an annual cost savings of over \$50 million (estimated to total more than \$150 million over the remaining term of the contract when the decision was made); (c) the NFL sought a surcharge that amounted to price increase of more than 350%, and exercising our tiering right meant that the NFL's increased price would be paid only by, and in respect of, customers who chose to receive NFLN, instead of all D2 subscribers; (d) even beyond that more than 350% price increase demanded in 2006, the NFL had indicated its intention to seek further increases in price and distribution in the future; (e) the limited remaining term of the 2004 carriage agreement heightened the risk of future price increases; (f) the NFL had refused my requests to negotiate an extension of the term in order to mitigate that risk; and (g) the NFLN's product offering did not in our view justify broad carriage at the NFL's price. The decision to tier NFLN had

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nothing to do with Versus or Golf Channel; there was no decision surrounding Versus or Golf Channel at that time, and the decision was in no way motivated by a desire to benefit those networks or any other networks affiliated with Comcast.

23. In my judgment, the abundance of live NFL games available on three national broadcast networks plus ESPN makes the incremental value of NFLN, with its eight live, regular-season NFL games, rather modest, especially because all of these games are available on other networks in the participating teams' home markets. The minimal value of NFLN does not justify burdening a broad cross-section of our customers with the high per-subscriber fees charged for NFLN.

24. I believe the limited market acceptance of NFLN reflects the network's excessive pricing and unattractive value proposition. Although the NFLN is available in approximately [REDACTED], almost half of this distribution is attributable to DirecTV, to whom I understand the NFLN was licensed as a package with the valuable Sunday Ticket package. Excluding DirecTV, I do not believe the NFLN has achieved significant market acceptance at its current pricing. Moreover, the NFLN's broad distribution on DirecTV as part of the Sunday Ticket package creates no incentive for Comcast and other cable providers to carry the NFLN broadly, because DirecTV's Sunday Ticket exclusivity destroys the ability of cable distributors like Comcast to compete with DirecTV for the avid football fans to whom these eight games might be attractive. By subscribing to DirecTV, those avid fans in search of NFL programming get over 200 games per season on the Sunday Ticket package, not only the eight games available on the NFLN.

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25. Although the cost of sports programming remains a concern, Comcast Cable distributes many unaffiliated networks with significant sports content broadly. Such networks include ESPN, ESPN2, ESPN News, TNT, TBS, USA and numerous regional sports networks.

26. Ratings are only loosely correlated with the license fee of a particular network. Price is a function of multiple variables, in particular, the breadth of consumer interest in a network, the intensity of consumer interest in the network, the reproducibility of the network's content, and the underlying cost to the network to acquire its content. Thus, it is not at all unusual for two networks with very similar ratings to command very different license fees. Likewise, ratings are one factor, but not an important factor, in deciding whether and at what level of service to carry a given network.

Comcast Cable's Carriage of Affiliated Networks

27. Neither I nor Comcast Cable have any incentive to favor affiliated networks with above-market prices or contract terms, and we do not do so. On the contrary, Comcast Cable's contracts with affiliated networks, including its contracts with Versus and Golf Channel, are subject to MFN provisions that ensure that the terms are no less favorable to Comcast Cable than those offered to any other distributor. Where contracts permit it, Comcast Cable typically enforces the MFN provisions of its carriage agreements with affiliated and unaffiliated networks alike.

28. Contracts with affiliated networks are negotiated on an arms-length basis. In almost every instance I can recall, Comcast Cable pushes back on the initial demands of the programming group (which negotiates on behalf of the networks) and some

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accommodation is reached, which is in any event subject to MFN protection going forward. In those negotiations, Comcast Cable looks for the same terms it would seek in negotiations with an unaffiliated network, including a fair price and protection against dramatic future price increases.

29. I regard Versus and Golf Channel as fairly-priced networks with broad reach, good quality, good price value and good protection on carriage and cost over time. Both Versus and Golf Channel have grown their distribution over time through competition in the marketplace, as most networks do. Versus and Golf Channel were both launched in 1995, in a different cable environment than existed at the time of the NFLN's launch in 2003. The cable environment in the 1990s was much more favorable for launching analog networks. After major proliferation of analog cable channels during the 1980s and 1990s, bandwidth restrictions have since slowed the pace of analog launches. During my tenure at Comcast, it has been exceedingly rare for a national network – whether affiliated or unaffiliated with Comcast – to have been launched on a widespread basis with principally analog distribution.

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Under penalty of perjury, I state that the foregoing is true and correct.



Madison Bond

Dated: April 6, 2009

MADISON E. BOND
Executive Vice President
Content Acquisition
Comcast Cable