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Federal Communications Commission
Office of the Secretary

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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 BRIAN ROBERTS

1. My name is Brian L. Roberts. My business address is One Comcast Center, Philadelphia, Pennsylvania 19103.
2. I serve as Chairman, Chief Executive Officer, and President of Comcast Corporation, of which Comcast Cable Communications, LLC (“Comcast Cable” and, together with its affiliates, “Comcast”) is an indirect subsidiary.
3. I was personally involved in negotiations with the National Football League (together with its affiliates, including NFL Enterprises LLC, the “NFL”) in 2003 and 2004 regarding Comcast’s carriage of the NFL Network (“NFLN”), as well as negotiations in 2004-2006 regarding access for Comcast to out-of-market, regular-season NFL games. When communications with the NFL were conducted by other Comcast executives, including Steve Burke, Madison

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Bond, Alan Dannenbaum, and Allan Singer, I was kept informed of developments and consulted actively with my colleagues about these matters.

4. From the outset, we were skeptical about carrying NFLN, a network *about* football but lacking any live NFL *games*. However, we did have a strong interest in developing a new and different relationship with the NFL. For years, our biggest competitor, DirecTV, had exclusive rights to provide the NFL Sunday Ticket, a package of more than 200 out-of-market, live regular-season NFL games. This programming package gave it a competitive advantage with die-hard NFL fans. We knew that DirecTV's exclusive rights were due to expire at the end of the 2005 season. We (and others in the cable industry) had a longstanding interest in making the NFL Sunday Ticket available to cable subscribers. For instance, in December 2002, iN DEMAND, a pay-per-view and video-on-demand cable service owned in part by Comcast, offered to pay [REDACTED] to [REDACTED] for each of five NFL seasons to distribute some portion of the Sunday Ticket package on a *non-exclusive* basis. The NFL, however, rejected this offer, and chose instead to renew NFL Sunday Ticket on an *exclusive* basis with DirecTV for a reported price of \$400 million a year.

5. Early in our discussions in 2003, I recall being told by Steve Bornstein, President and CEO of NFLN and Vice President of Media of NFL Enterprises, that Comcast could not expect to have a reasonable chance to bid for

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access to the NFL Sunday Ticket or to rights to telecast other NFL games (the NFL was considering creating a new package of Thursday and Saturday games) unless it first agreed to carry NFLN. It was the NFL, not Comcast, that first linked the issues of Comcast licensing NFL game telecast rights to carriage of NFLN.

6. Throughout most of the negotiations in 2003 and 2004, the parties agreed that any Comcast carriage of NFLN would initially be on Comcast's second-most highly penetrated level of digital service ("D2"). It was also agreed in this period that, if Comcast and the NFL were unable to reach agreement that gave Comcast rights to telecast the NFL Sunday Ticket or another package of games for national telecast on a Comcast network, Comcast would have the right to place NFLN on a sports tier. Both of these provisions were included in the agreements entered into on August 11, 2004. These terms were essential to our ultimate contractual understanding with the NFL, and Comcast would not have agreed to carry NFLN without these terms.

7. In subsequent negotiations, most of our interest was focused on the new package of live regular-season NFL games that the NFL was creating. In fact, no meaningful opportunity to negotiate for the NFL Sunday Ticket ever materialized. Our initial inquiries were quickly rebuffed, with then-NFL Commissioner Paul Tagliabue telling me "don't waste your time," and in

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November 2004, the NFL extended its exclusive agreement with DirecTV through 2010. But Comcast and the NFL engaged in extensive discussions in 2005 and early 2006 about the possibility of the NFL licensing a newly-created package of live NFL games to the Outdoor Life Network (“OLN”), a cable channel (now known as Versus) owned and operated by Comcast.

8. In connection with those discussions, a variety of different business arrangements were discussed, but at no time did Comcast demand—or even request—an equity interest in NFLN. The only equity interest discussed was an equity interest *in OLN* that was requested *by the NFL*. As Mr. Bornstein explained to me, and other NFL representatives confirmed, the NFL wanted us to structure the transaction in a manner that provided “as much equity as possible”—offset by lower cash payments—because the NFL owners could retain the equity for themselves, while cash payments needed to be shared with the NFL players pursuant to the NFL’s collective bargaining agreement. NFL representatives also explained to us that the Comcast/OLN offer was ultimately being compared to an NFLN offer, whose value was largely driven by the equity value to the NFL owners of NFLN as a cable network. So, to be competitive, Comcast needed to include equity value in our offer. Thus, our proposals to the NFL included giving the NFL a substantial equity interest in OLN. To guarantee the economic value of

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that equity interest, the NFL's stake in OLN would have been subject to redemption, at the NFL's option, in the form of Comcast common stock.

9. I met with the NFL's Broadcast Committee on December 15, 2005. I did not tell the Committee that OLN's acquisition of the eight-game NFL package would enable Comcast to convert itself from being primarily a distribution company to primarily a content company; any such statement would have been illogical given Comcast's tens of billions of dollars of investment in cable distribution facilities. Rather, in answer to a question about the motivations underlying Comcast's bid for Disney (which had been launched in February 2004 and then abandoned in April 2004), I recall explaining that Comcast's bid for Disney would have enabled Comcast to become more diversified, and that I believed a greater balance between content and distribution would create additional value for shareholders. In this and subsequent discussions with the NFL over the next six weeks, as the owners were exploring their different options and ways in which they might maximize their potential gains, I recall explaining that content companies commonly traded at higher multiples of cash than distribution companies. These points were of interest to the NFL owners because of the redemption right (in Comcast stock) that the NFL owners were seeking.

10. During this time, I also responded to questions raised by the NFL owners about OLN's ability to showcase the new NFL games package. I

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described Comcast's ownership and operation of several existing networks and illustrated Comcast's creative and technical capabilities on the content side.

11. I also recall that, in preparation for the December 15, 2005, meeting with the Broadcast Committee, Steve Burke and I discussed the possibility that Steve Bornstein had not fully acquainted the NFL executives and owners with the terms of the 2004 Agreements – in particular, Comcast's right to place NFLN on a sports tier if Comcast was not granted the right to telecast live NFL games on a Comcast-owned network (the NFL Sunday Ticket opportunity never having materialized). I therefore highlighted this fact for the Broadcast Committee, and no NFL representative disagreed.

12. I recall mentioning this fact again in discussions with NFL officials during December 2005 and January 2006. Comcast's tiering option was an important and legitimate factor for the NFL to weigh as it made its final decision. One of the many virtues of the OLN proposal that the parties negotiated so intensely was that OLN had been launched a decade earlier, had over time achieved broad distribution on widely-penetrated tiers from cable and satellite providers, and already had an abundance of live sports programming. In contrast, NFLN had achieved much less substantial penetration in the marketplace. We repeatedly emphasized the current realities of the cable programming market, where competing demands for bandwidth and other factors had made it

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increasingly difficult for new networks to launch and obtain distribution to the degree that already-successful networks had.

13. I had numerous calls and meetings with NFL Commissioner Tagliabue during our negotiations with the NFL for OLN to acquire the so-called eight-game package. During those discussions, Mr. Tagliabue offered suggestions on how Comcast could strengthen the appeal of its offer to the NFL Broadcast Committee, and he also shared his thoughts on the process. One of the thoughts Mr. Tagliabue expressed was that if Comcast could help the NFL convince other cable companies to carry the NFLN that would be a positive. I replied that I thought Comcast could help in that regard, since our network, OLN, already had agreements and relations with many of those carriers. At no time did I ever threaten to harm the NFL by interfering with its marketing efforts if OLN did not get the games.

14. I have no recollection of saying to Mr. Tagliabue, on January 27, 2006, when the NFL informed us that it had decided to keep the eight-game package for NFLN, that the NFL's relationships with the cable industry are going to get "complicated" or "very interesting." I do recall communicating to Mr. Tagliabue that I was disappointed and, as I had before, that I foresaw that the NFL was likely to continue to face difficulties persuading cable operators to provide NFLN with broad distribution, given that the addition of eight live games would

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add significantly to the price to distributors but not materially improve the overall appeal of its content to consumers. I remember Mr. Tagliabue responding to the effect that, "I may not disagree with you. Perhaps the owners are making a mistake here. Your offer may be better. Sometimes the owners have to learn the hard way."

15. I never threatened to place NFLN on a sports tier if OLN were not awarded the eight-game package, and our decision to move the NFLN to a sports tier was not motivated by any desire to retaliate against the NFL. To the contrary, as I told Roger Goodell, Commissioner of the NFL, on October 3, 2006, Comcast Cable had a clear contractual right to tier the NFLN and exercising that right would save over \$50 million per year in affiliate fees, while maintaining the ability to offer the NFLN to those subscribers who chose to receive it.

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

Handwritten signature of Brian L. Roberts in black ink, consisting of the letters 'B', 'L', and 'R' with a period and a dash.

Brian L. Roberts

Dated: April 6, 2009