United States Senate
WASHINGTON, DC 20510

October 28, 2008

Mr. Roger Goodell
Commissioner
National Football League
280 Park Avenue
New York, NY 10017

Dear Commissioner Goodell:

Your decision last December to permit the final National Football League (NFL) game of the regular season between the New England Patriots and the New York Giants to be broadcast nationwide on free, over-the-air television, rather than exclusively on the NFL Network, was a victory for the NFL and for its fans. More than 34 million people reportedly watched the game – the largest audience for a regular season game in more than a decade, and more than three times the largest audience an NFL Network game has ever received.

We write today because we are disappointed that, rather than building on this success, the NFL will return to restricting games to the NFL Network beginning November 6. That the NFL would choose to have fewer viewers for select games again this year is an indication of its interest in moving toward a pay television model.

Congress facilitated the nationwide broadcast success of the NFL by creating an antitrust exemption for NFL teams to negotiate jointly telecast agreements with over-the-air broadcasters; it provides the NFL with protection for the content in those broadcasts through copyright law. We are concerned that the NFL is now leveraging the success of its over-the-air broadcasts to move games to pay television, to the detriment of NFL fans across the country that have made watching NFL games a ritual every Fall.

In 2006, the NFL provided testimony to the Senate Judiciary Committee that even games televised on pay television "are televised on free over-the-air television in the home cities of the competing teams." We appreciate that commitment to broadcast television, but we are troubled by how narrowly the NFL is interpreting this policy. The NFL's application of its policy does nothing for NFL fans in Burlington, Vermont, Hartford, Connecticut, or Providence, Rhode Island, which the NFL does not consider to be part of the home market of the New England Patriots; or residents of Johnstown, Pennsylvania, which the NFL does not consider part of the home market of the Pittsburgh Steelers; or residents of York, Pennsylvania, which the NFL does not consider part of the home market of the Philadelphia Eagles; or residents of Colorado Springs, Colorado, Casper, Wyoming, or Rapid City, South Dakota, which the NFL does not consider part of the home market of the Denver Broncos; or residents of Illinois outside Chicago, which the NFL does not consider part of the Chicago Bears market; or residents of New Mexico who are fans of the Broncos and the Dallas Cowboys, but which the NFL does not consider to be in any home market.

In short, the policy leaves behind NFL fans across the country simply because they live outside cities to which the NFL has granted franchises. Ultimately, it may be for the courts to determine whether the NFL member teams are using the NFL Network to restrict the output of game programming in a manner that violates the antitrust laws. In the meantime, we strongly encourage you to take prompt action that will ensure fans in every market receive the benefit of this over-the-air policy when their closest NFL teams, or the teams with which their areas have been historically aligned, are playing in games telecast nationally on the NFL Network.

Sincerely,

Arlen Specter

Patrick Leahy

Sherrod Brown

Jack Reed

Pete V. Domenici

Ken Salazar

Michael B. Enzi

Bill Sanders

Jim Bunning

Wayne Allard

Dick Durbin

John Thune

John Barrasso