NATIONAL FOOTBALL LEAGUE

December 21, 2007

ROGER GOODELL
Commissioner

Honorable Patrick Leahy
United States Senate
433 Russell Senate Office Bldg
Washington, DC 20510

Re: **NFL Network**

Dear Senator Leahy:

You recently wrote to us concerning the ability of Vermonters to see the December 29 Patriots-Giants game that will be telecast by NFL Network.

Despite Vermonters' affection for the two teams that will be playing on December 29, Vermont is not – and never has been – a "home market" of either the Patriots or the Giants for purposes of our cable simulcast rules (which, as discussed below, are unique among professional sports leagues). Consequently, the game has not been licensed to over-the-air stations in Vermont – just as the Patriots-Ravens game that was originated by ESPN earlier this season was not licensed to Vermont stations.

That being said, the NFL Network is carried by cable systems that serve the vast majority of Vermonters, as well as by satellite carriers that serve your constituents. It is our understanding that Comcast provides cable service to the most Vermonters – 75,000 out of roughly 125,000 cable households in the state. Only 20,000 cable households in the state receive service from carriers that do not have NFL Network carriage deals – the largest being Charter, which serves 13,000 households in Saint Johnsbury but does not have an NFL Network carriage deal.

Comcast has chosen not to deliver NFL Network to all of its Vermont subscribers, but instead limits distribution to those who are willing to pay Comcast a substantial premium for a "sports tier". That being said, even though we dispute Comcast's right to limit NFL Network distribution to a sports tier under our carriage contract (an issue we are litigating in New York state court) Comcast has one contractual right that is beyond dispute: the right to make NFL Network available to <u>all</u> of its subscribers in accordance with the terms of its contract. One of our other cable partners recently elected to do just that, "melting down" NFL Network to all of its subscribers to ensure that they had access to a regional club's NFL Network game telecast. We have made it clear to Comcast that it should feel free to do such a "melt-down" in connection with the December 29 game – not just in Vermont, but throughout New England and potentially nationwide – and that if it does so, NFL Network would waive any contractual terms that could be said to prevent moving the NFL Network back to its previous contractually-permitted service tier (just as we did with the other carrier I mentioned). We would respectfully urge you to contact Comcast and second our suggestion on this point.

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With respect to cable carriers that do not have NFL Network carriage deals, in an attempt to reach a prompt resolution of this matter, yesterday I sent a detailed proposal to Time Warner Cable to create a mechanism to end the impasse. Such a mechanism is necessitated in that particular case because Time Warner has refused to negotiate NFL Network carriage terms with us (their only offer since the beginning of the football season was in the form of a letter on October 22 that was printed as an advertisement in Texas newspapers before the NFL even received it), but we would be prepared to put in place similar mechanisms with Charter and other cable carriers as well. More important, such a mechanism would put the interests of our fans – your constituents – first, and do so in time for the December 29 game.

We proposed a binding final-offer, "baseball style" arbitration process into which NFL was (and still is) prepared immediately to enter with Time Warner. The objective would be to have a neutral third party determine the price and tier for NFL Network distribution on Time Warner systems, based on the fair market value of the NFL Network program service. Because we recognize that the arbitration process will take time, the NFL said it would make the NFL Network available to all Time Warner customers immediately after Time Warner entered into a written agreement to participate in the arbitration process and to be bound by its result.

This was not a proposal to "force" NFL Network carriage "on our terms". Rather, it was designed to offer a way to ensure that your constituents could view our programming (including the December 29 game) on fair terms. The arbitrator could decide that the "fair terms" are those proposed by us, or those that Time Warner proposes. Either way, however, consumers – including our fans – would have been the winners.

Unfortunately, Time Warner, in a matter of hours, rejected this proposal.

In its rejection, Time Warner continued to insist that we accept the terms they laid out in their October 22 letter – narrow, premium-priced distribution of our Network or pay-per-view of our games (which, as a matter of longstanding policy, is unacceptable to us). Alternatively, Time Warner pushed a theme it introduced in a letter it sent to Senator Kerry on December 13, 2007, refusing to meet with us in Senator Kerry's office: i.e., that we switch the game to broadcast television or provide it to them on a "freeview" basis. Interestingly, Time Warner has never been willing to engage in substantive discussions on any of these positions – both of which were laid out in letters released to the press before they were received by us.

As to the latter point – the suggestion that the game be transferred to broadcast television -- the NFL always has been, and remains, uniquely committed among professional sport leagues to over-the-air television. We originate 231 of our 256 game telecasts and all of our postseason telecasts on over-the-air broadcast television. We pre-assign 25 "representative" games in April to our two cable packages, which as a matter of policy and contractual commitment are not moved to other television packages. Moreover, as a matter of longstanding policy, all of such games are also broadcast over-the-air via stations in the home and away teams' home cities. No other sport matches that commitment to free over-the-air television.

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It is interesting that cable carriers such as Comcast and Time Warner now find this NFL commitment to free television inadequate, because they want to force the NFL to make broadly available to their subscribers – at no cost to themselves -- a good game on a channel that they have chosen, for profit-margin reasons, not to carry or to carry only narrowly. But not so long ago, that same policy was deemed "too broad" by these same large cable carriers. Let me explain:

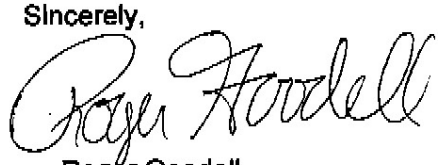
- During our 2005 negotiations for the current TV deal with ESPN, we wanted to extend our over-the-air simulcasts of cable games to participating clubs' secondary markets. We were unable to secure agreement from ESPN to this proposal, and we were led to understand that it was because major cable distributors such as Comcast and Time Warner did not like it.

- Further, during those negotiations, we were asked on behalf of those same cable partners to limit over-the-air simulcasts of our cable games to standard definition – meaning that any viewer who wanted to watch those games in the best quality would have to watch them on a pay-television system. We refused, and we continue to require that games be simulcast over-the-air in home cities high definition.

- Finally, during our subsequent negotiations with Time Warner- and Comcast-affiliated networks for the new 8 game package that is now aired on NFL Network, both Comcast and Time Warner expressed a desire to do away with the over-the-air simulcasts even in the clubs' home cities, and a total unwillingness to extend such simulcasts to secondary markets. That position was one reason why the games were given to NFL Network, so we could continue to deliver all our games over-the-air to our teams' local fans. In doing so, we are following the same policy for NFL Network that we have applied for the last 21 seasons to ESPN's games, down to licensing stations in the exact same markets.

We still hope that the NFL Network carriage situation can be resolved in time to ensure even broader distribution of the December 29 game in Vermont. To that end, we are prepared to leave our arbitration offer to Time Warner open through December 28 -- and to enter into the same arrangement with Charter or any other cable company that is interested in doing so. Despite Time Warner's initial rejection, I hope that this bold proposal will help resolve this situation to the benefit of the fans and all other interested parties.

Sincerely,



Roger Goodell

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