penetration, cable operator backing is not sufficient to generate the level of viewership necessary to make the networks commercially viable. First, Outdoor Life and Speedvision must compete for carriage even on their cable operator owners' systems, and often must compete with each other for carriage. Second, even if all of the networks' owners' systems were to carry the networks, this would still result in penetration of only twelve million subscribers, far from the twenty four million viewers necessary to make the networks economically viable. Third, even if the networks' cable operator owners were willing to carry the networks on all of their systems, adoption of the Commission's proposed CLA rule revisions would foreclose them from doing so and would even require them to bump the networks from some of the systems on which they presently are carried, to make room for favored CLA programmers such as home shopping networks and infomercials.

20. Access to the extant, available channel capacity of cable systems nationwide has been a fundamental premise on which Outdoor Life's and Speedvision's business plans have been based, from the time at which the networks were first conceived, through their investment to date of nearly $50 million. Twice, Congressional and Commission action has hit the networks with setbacks, forcing the networks to revise their business plans. First, with the imposition of must-carry requirements, cable systems were required to devote precious channel capacity to the carriage of must-carry broadcast stations (some of which were home shopping services), instead of the addition of new, start-up networks. Then, with the revision of the Commission's rate regulations pursuant to the 1992 Cable Act, further reductions occurred in the channel capacity available for new programming networks.

21. While the CLA rules have been in place since 1984, CLA programming has not

significantly consumed cable television channel capacity, and the Commission at no time during that period has given any warning that it would interpret Section 612 of the Communications Act as requiring or permitting it to radically revise the CLA rules so as to spur CLA usage through grossly subsidized rates. Consequently, throughout that period, cable system channels that could be subject to CLA demands remained available for distribution of new quality programming networks, who must be paid, not pay, for carriage. The Commission's implicit fee formula, which priced CLA carriage based on market value, did not change these assumptions. Nor did anything in the 1992 amendment to Section 612 or in the Commission's 1993 First Report and Order, which implemented the 1992 Cable Act, alert the industry that CLA programmers would be substantially subsidized to ensure the full occupancy of CLA allocated channels. To the contrary, programming networks had every indication that the Commission would leave leased access to the marketplace, and that new and developing quality niche cable networks would not be displaced by home shopping networks and infomercials. And it was on this basis that Speedvision and Outdoor Life proceeded with their commitment to invest over $180 million to establish their networks, and to attempt to provide two new, diverse program sources of the kind that Congress sought to encourage. Indeed, had the owners of Outdoor Life and Speedvision known what the Commission had in mind, they may not have made the investments necessary to create these networks, and the public would not have received the benefit of the networks' diverse and special programming.

Impact Of A Further Reduction In Channel Capacity

22. The primary reason given by cable systems to date for not carrying Outdoor Life and Speedvision is their lack of available channel capacity. First, because of the must-carry

requirements, and then due to rate reregulation, operators cut back on their planned addition of new networks such as Outdoor Life and Speedvision. In addition, forecasts regarding the advent of digital compression repeatedly proved over-optimistic, and the actual, widespread availability of that technology remains years away. Nonetheless, Outdoor Life and Speedvision have been able to garner 3.1 million and one million viewers, respectively.

23. Now, however, cable systems have again put programming agreements with, and launches of, new networks on hold, this time waiting until after the Commission resolves the pending CLA issues. The further reduction in cable systems' available channel capacity that would be occasioned by the Commission's adoption of its presently proposed CLA rule revisions would have a devastating impact on Outdoor Life's and Speedvision's ability to survive. Not only would these new networks be unable to increase their subscriber penetration, they would inevitably be bumped from many cable systems on which they currently are carried. For cable systems have made it clear that new, start-up niche programming networks like Outdoor Life and Speedvision, the networks most recently added to their systems, will be the first to be displaced by CLA programming, and that channels like CNN, ESPN, HBO, Discovery or Disney, which cater to wider audiences and have had years to establish loyal subscriber followings, will not be dropped. Outdoor Life and Speedvision could not recover from the effect that being dropped from cable systems would have on their ability to market their programming and sell their advertising time. That fate would not only destroy the nearly $50 million investment in the network to date, but would also jeopardize the jobs of the networks' nearly one hundred employees.

24. The Commission's proposed CLA formula, which artificially spurs demand for

CLA channels, would destroy the fundamental premise on which Outdoor Life and Speedvision were launched and on which their survival depends -- the availability of channel capacity on the nation's cable television systems for the launch and expansion of new and developing quality program networks. Such action would be contrary to congressional intent and illegal. Moreover, it would be unfair to quality networks such as Outdoor Life and Speedvision, and not in the interest of the millions of viewers that they seek to serve. I urge the Commission to abandon its current proposal, and to consider alternative approaches, which are set forth in the networks' comments, that would not jeopardize the future of creative, diverse programming networks such as Outdoor Life and Speedvision.

I, Roger Williams, certify, under penalty of perjury, that the foregoing information is true and correct to the best of my knowledge, information and belief.

Roger Williams

May 15, 1996

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

In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation Commercial Leased Access	MM Docket No. 92-266 CS Docket No. 96-60

AFFIDAVIT OF CHRISTOPHER R. MURVIN

1. I, Christopher R. Murvin, am Senior Vice President, Legal and Business Affairs, and Secretary, of The Golf Channel. My responsibilities include serving as general counsel to the Company, a role that involves the negotiation of affiliation agreements with multichannel video programming distributors. In this capacity, I am familiar with all aspects of The Golf Channel's business operations, including its need for carriage on cable television systems and the impact that a reduction in cable systems' available channel capacity would have on the ability of The Golf Channel to remain commercially viable.

2. The purpose of this affidavit is to provide information to the Federal Communications Commission ("Commission") in response to the Further Notice of Proposed Rulemaking ("NPRM") issued in the captioned matter concerning commercial leased access ("CLA").

3. The Golf Channel launched on January 17, 1995, and is currently viewed by approximately 2.5 million subscribers in the United States As a recently launched programming

network with relatively low subscriber penetration, The Golf Channel will be significantly and adversely impacted by the regulations proposed by the Commission.

4. It is my understanding that the Commission has proposed a rate formula in the NPRM that would eliminate the highest implicit fee formula for CLA channels and substitute in its place a formula based initially on costs and, after the CLA channel set-asides are full, on the marketplace value of the displaced channels. Under the Commission's proposed "cost/market" formula, the cost of leasing a channel under CLA would be negligible and carriage of CLA programmers effectively would be subsidized.[1] A formula that reduces rates below the market value will artificially spur demand for scarce channel space by home shopping and infomercial channels and others who do not need to charge fees for the distribution of their programming, and will destroy a fundamental premise on which The Golf Channel and other high quality, conventional cable programmers were launched -- the availability of channel capacity on the nation's cable television systems.

5. The Golf Channel has already suffered significant setbacks as a result of federal regulation of cable systems. The Golf Channel's business plan was premised on the Commission's carriage requirements as they existed in early 1992. Must-carry requirements initially caused a substantial decrease in the channel space on cable systems available to quality programming networks such as The Golf Channel. Then rate re-regulation, which capped cable operators' rates, caused operators to add shopping networks, which generated unregulated revenues and did not charge program license fees, in place of higher quality niche programming

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[1]It is also my understanding that the proposed CLA formula results in a negligible minimum CLA rate, and in some cases even a negative rate that arguably could require a cable system to pay a CLA programmer.

networks such as The Golf Channel, whose rates and revenue generating potential were constrained by the rate regulations. Also, those regulations, by restricting cable systems' revenue growth and even imposing rollbacks, caused many cable operators nationwide to forego planned system upgrades that would have expanded channel capacity and enabled systems to commence carriage of The Golf Channel. Finally, the "going-forward" rules created a preference for low cost programming over quality programming. At each of these junctures, regulatory action reduced the number of channels available to programmers such as The Golf Channel, introduced additional uncertainty in the negotiations between cable systems and The Golf Channel regarding carriage, and retarded The Golf Channel's efforts to successfully launch and increase distribution of its network.

6. Now, the Commission's proposed revisions to the CLA rules threaten to deliver a final regulatory blow to The Golf Channel -- a blow from which the network may not recover.

7. Below, I will address the following points:

a. the nature of the programming carried on The Golf Channel, and the decisions involved in targeting this niche;

b. the investment necessary to launch and thereafter operate The Golf Channel, and why The Golf Channel must charge affiliates for carriage of its programming;

c. the fundamental importance of carriage by cable systems to The Golf Channel's ability to remain commercially viable, and how extant, available channel capacity was a fundamental premise on which the network's business plan was founded; and

d. the profound impact on The Golf Channel that would be caused by adoption of the Commission's proposed revisions to its commercial leased access regulations and the resulting reduction in available cable system channel capacity.

The Golf Channel

8. There are presently over 350 quality programming networks competing for carriage on cable systems. In order to attract and retain subscribers, niche programmers must target a segment of the population whose programming needs have not yet been adequately filled, and provide programming of the type, quantity and quality that their viewers desire. Niche programming such as this allows cable operators to do more than just skim the surface of the subject area covered.

9. Cable systems generally have been receptive to launching niche programming networks. While programming networks and cable operators may have differing interests on such economic matters as affiliation fees and marketing support, both are eager to provide programming that is distinct from other program networks and that attracts and retains subscribers.

10. The Golf Channel is a niche programming network that was created to meet the needs and interests of golf enthusiasts. The Golf Channel thoroughly studied its potential audience and its viewing needs,[2] and determined that the golf niche was undeserved. The Golf Channel's programming is overwhelmingly new and original and does not merely duplicate coverage of golf by other cable or broadcast television networks. No other programming network offers the breadth, depth or quality of coverage of the game of golf, as is provided by

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[2]The Golf Channel's demographic research reflects that there are approximately 25 million regular golfers in the United States, 73.6 percent of whom subscribe to cable television. In addition, there are at least 15 million television viewers who frequently watch golf on television even though they do not regularly play the game.

The Golf Channel.

The Golf Channel's Programming

11. Examples of some of the programs currently available on The Golf Channel are "The Golf Channel Academy," which provides instruction from some of the world's best teaching professionals, including segments devoted specifically to young golfers; "Golf Central," which provides, live each evening from The Golf Channel's studios, up-to-the-minute golf news and features, and exposure to some of golf's overlooked enthusiasts, such as children, minorities and the disabled; "Golf Talk Live," a weekly call-in show on which subscribers can talk one-on-one with legends like Arnold Palmer and current tour stars like Ben Crenshaw and Annika Sorenstam; and "Profiles of a Pro," which provides subscribers with a look at the real lives of golf professionals. The Golf Channel also provides coverage of over 70 tournaments world wide, none of which are covered by any other programming network in the United States.[3]

12. In addition, The Golf Channel offers cable systems a program catered to the residents of the community served by the cable system. This program, entitled "The Golf Channel Community Links," consists of four local branding segments, each designed to encourage community involvement by cable operators.

13. Eighty-five percent of The Golf Channel's current programming is original production, being either produced, or acquired for distribution for the first time in the United States, by The Golf Channel, at an annual production expenditure in excess of $30 million. A

[3]The Golf Channel's live tournament coverage in terms of hours telecast in 1996 will be more than the *total* hours of tournament coverage telecast by *all* other cable *and* broadcast networks combined.

number of these original programs are produced in The Golf Channel's own studios or at distant locations by the network's own production crews.

Investment To Launch And Operate A Quality Programming Network

14. Launching a quality programming network requires a tremendous financial investment. The Golf Channel is not expected to break even until 1998. By that time, it will have invested at least $130 million.

15. It is much more costly to launch and operate a network that features original programming, such as The Golf Channel, than a network devoted to re-runs of already produced and distributed programs, or home shopping or infomercial programming. For example, production costs alone for one hour of original programming on The Golf Channel typically exceed $15,000.

16. The Golf Channel's costs are further increased due to its commitment to maximizing the quality of every aspect of its programming. For example, The Golf Channel's professional golf instructors are among the best in the world. Its coverage of tournaments includes such distant locations as New South Wales, Australia, Dubai, United Arab Emirates, Cheju Island, South Korea and Sun City, South Africa. And The Golf Channel's production facility is a state-of-the-art, all digital studio operated by highly talented and experienced programming, production and operations personnel. As a result, The Golf Channel's production, quality and content equals or exceeds broadcast and established cable network standards. These, and other, attributes account not only for the widely acclaimed quality of the network, but also for the immense start-up and operating costs that will have been incurred by the time the network celebrates its second anniversary.

Distribution And Revenues Necessary For Commercial Viability

17. Conventional, quality 24 hour programmers depend on a combination of affiliation fees and advertising revenues to attain commercial viability. Because of its very substantial start-up costs and continuing programming expenditures, The Golf Channel must charge cable operators for the right to distribute the network's programming. Unlike a home shopping or infomercial programmer, whose costs are substantially less and that generates a substantial revenue stream from the sale of featured products, The Golf Channel could not possible pay cable operators anything, or forego the right to charge cable operators affiliation fees, for the distribution of its programming.

18. Distribution is the key to attaining the revenues necessary to sustain the operation of the network; and carriage on cable systems nationwide is the most important element of distribution. As The Golf Channel must reach 20 to 30 million subscribers before it will turn the corner to profitability, even carriage by all of the non-cable multi-channel video programming distributors would still not give The Golf Channel nearly the subscriber penetration it needs to become commercially viable Cable systems are still the primary distributor with the largest penetration and, thus, are central to The Golf Channel's survival.

19. Distribution is pivotal in generating not only affiliation fees, but also advertising revenues, both of which are directly tied to subscriber penetration. The Golf Channel needs to acquire annual advertising revenues in the $30 million range to be commercially viable. However, until The Golf Channel achieves a penetration of at least ten million subscribers, the only advertisers that will purchase time on The Golf Channel are industry-specific advertisers such as golf equipment manufacturers, and high-end advertisers such as luxury automobiles. Yet,

the pool of industry-specific advertisers is small and high-end products advertise less frequently. To gain access to volume advertisers, such as soft-drink companies, household product companies, and mid-priced automobiles, a network must break through the ten million subscriber mark; and some volume advertisers insist on penetration on the order of fifteen to twenty million viewers. Only then will a network achieve distribution capable of generating a level of advertising revenues sufficient to turn the corner to profitability. But, if available channel capacity on the nation's cable systems is suddenly substantially reduced, The Golf Channel's distribution will falter, and the network will be unable to grow the subscriber base necessary to produce advertising and affiliation revenues sufficient to sustain the network.

20. Although the fact that several cable operators have minority investment interests in The Golf Channel (Comcast, 22%, Adelphia 3-4%, and Continental 22%)[4] obviously helps somewhat in gaining subscriber penetration, cable operator backing alone is not sufficient to ensure the level of viewership necessary to make the network commercially viable. First, The Golf Channel's cable operator investors have not agreed to carry The Golf Channel on all of their systems and, in fact, the network's largest cable affiliates are not its cable operator investors. Indeed, contrary to popular belief, The Golf Channel must compete for carriage even on its investors' systems. Second, even if all of The Golf Channel's cable operator investors' systems were to carry The Golf Channel, this would still result in penetration of only ten million subscribers, far from the number of viewers necessary to make the network economically viable. Third, even if the network's cable operator investors were willing to carry the network on all of

[4]The remainder of The Golf Channel's equity is owned by eighty (80) individual and institutional stockholders who, in addition to the cable operator investors, have provided the majority of the network's investment capital.

their systems, adoption of the Commission's proposed CLA rule revisions would foreclose them from doing so and would even likely require them to bump the network from some of the systems on which it is presently carried to make room for favored CLA networks such as the home shopping channels.

21. Access to the extant, available channel capacity of cable systems nationwide has been the fundamental premise on which The Golf Channel's business plan has been based, from the time the network was first conceived, through its investment to date of more than $80 million. Twice, congressional and Commission action has forced The Golf Channel to revise that business plan. First, with the imposition of must-carry requirements, cable systems were required to devote precious channel capacity to the carriage of qualified broadcast stations (some of which were home shopping services). Then, with the revision of the Commission's rate regulations, pursuant to the 1992 Cable Act, further reductions occurred in the channel capacity available for new programming networks. Indeed, although The Golf Channel was originally intended to be a premium service, it soon found that insufficient channel capacity existed to generate the subscriptions necessary to remain afloat. Consequently, it shifted its fee structure to remain commercially viable.

22. While the CLA rules have been in place since 1984, CLA programming has not significantly consumed cable television channel capacity, and the Commission at no time during that period gave warning that it would interpret Section 612 of the Communications Act as requiring or permitting it to radically revise the CLA rules so as to spur CLA usage through subsidized rates. Consequently, throughout that period, CLA channel allotments remained available for use by quality programming networks who must be paid, not pay, for carriage. The

Commission's implicit fee formula, which also priced CLA carriage based on market value, did not change these assumptions. Nor did anything in the 1992 amendments to Section 612 or in the Commission's 1993 First Report and Order, which implemented the 1992 Cable Act, give the industry any indication that CLA programmers would be subsidized to ensure the full occupancy of CLA set-aside channels. To the contrary, programming networks had every indication that the Commission would leave leased access to the marketplace, and that new and developing quality niche cable networks would not be displaced by home shopping networks and infomercials. And it was on this basis that The Golf Channel proceeded with its investment of more than $80 million to establish its network.

Impact Of A Further Reduction In Channel Capacity

23. The primary reason given by cable systems to date for not carrying The Golf Channel is their lack of available channel capacity. First, because of the must-carry requirements, and then due to rate reregulation, operators cut back on their planned addition of new niche networks such as The Golf Channel.

24. Now, cable operators have again put new programming agreements and system launches on hold, this time waiting until after the Commission resolves the pending CLA issues. A further reduction in cable systems' available channel capacity, occasioned by the Commission's adoption of its proposed CLA rule revisions, would have a devastating impact on The Golf Channel's ability to survive. Not only would The Golf Channel be unable to increase its subscriber penetration, it would inevitably be bumped, because of CLA preferences, from many cable systems on which it presently is carried. For, cable systems have made it clear that new, start-up niche programming networks like The Golf Channel would be the first networks to be

displaced by CLA programming, and that channels like CNN, ESPN, HBO, Disney or Discovery, which cater to wider audiences and have had years to develop loyal followings, would not be dropped. Should this occur, The Golf Channel will not be able to recover from the impact that being dropped from cable systems will have on its ability to effectively market its programming and sell its advertising time. Such a fate would not only destroy the nearly $100 million invested so far in the network by over 80 persons and institutions, but would also jeopardize the jobs of The Golf Channel's nearly 190 employees.

25. Obstacles and delays to new cable system launches threaten The Golf Channel's continued viability. The Golf Channel does not have the luxury of time to wait for the 500 channel information superhighway. It needs to grow its distribution to over 20 million viewers in less than two years. The Commission's proposed CLA formula, which artificially spurs demand for CLA channels, will deny the network such growth and will destroy the financial premise on which The Golf Channel was launched and on which its survival depends -- the availability to new, start-up networks of channel capacity on the nation's cable systems.

26. For these reasons, I urge the Commission not to adopt its pending CLA proposals. Instead, the Commission should move swiftly to eliminate the cloud of uncertainty that its CLA proposals have created between new programming networks and cable operators, and to confirm that start-up networks such as The Golf Channel will not be discriminatorily displaced from access to available channels on the nation's cable television systems.

I, Christopher R. Murvin, certify, under penalty of perjury, that the foregoing information is true and correct to the best of my knowledge, information and belief.

Christopher R. Murvin

May 15, 1996

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

In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation Commercial Leased Access	MM Docket No. 92-266 CS Docket No. 96-60

AFFIDAVIT OF JEFFERI K. LEE

1. I, Jefferi K. Lee, am President of BET Networks and BET on Jazz: The Cable Jazz Channel ("BET on Jazz"). In this capacity, I am familiar with all aspects of the network's business operations, including its need for carriage on cable television systems and the impact that a reduction in channel capacity would have on the ability of the network to remain economically viable.

2. The purpose of this affidavit is to provide information to the Federal Communications Commission ("Commission") in response to the Further Notice of Proposed Rulemaking ("NPRM") issued in the captioned matter concerning commercial leased access ("CLA").

3. BET on Jazz launched on January 15, 1996, and currently is viewed by 250,000 subscribers in the United States. As a recently launched programming network with relatively low subscriber penetration, BET on Jazz will be impacted significantly by any regulations adopted by the Commission that reduce the channel capacity on cable systems that is available to start-up programming networks.

4. It is my understanding that the Commission has proposed a rate formula in the NPRM that would eliminate the highest implicit fee formula for CLA channels and substitute in its place a formula based initially on costs and, after the channel set-asides are full, on the market-place value of the displaced channel. Under the Commission's proposed "cost/market" formula, the cost of leasing a channel under CLA would be negligible and carriage of CLA programmers effectively would be subsidized.[1] A formula that reduces CLA rates below the market value of a channel will artificially spur demand for valuable channel space and destroy the fundamental premise on which BET on Jazz was launched -- the availability of channel capacity on the nation's cable television systems for the carriage of new programming networks.

5. BET on Jazz originally was scheduled to launch in September, 1994. The launch was postponed several times because of a reduction in the amount of available channel capacity on cable systems caused by the Commission's implementation of the 1992 Cable Act. Specifically, must-carry and retransmission consent requirements initially required cable systems to devote a significant amount of their extant channel capacity to local broadcasters. In addition, the Commission's benchmark regulations, which decreased the incremental amount cable operators could charge per channel as channels increased, created a disincentive to cable systems to add additional programming channels. Rate re-regulation also reduced cable operators' revenues, causing many operators to forgo planned system upgrades and channel expansions that would have enable systems to commence carriage of BET on Jazz.

[1]The revised formula would, I understand, result in a lease rate that is negligible and, in some cases, could actually result in a negative rate that arguably would require the cable system to pay the CLA programmer.

Presently, the Commission is considering revisions to its CLA rules that threaten to deliver a final regulatory blow, from which BET on Jazz may be unable to recover.

6. In this affidavit, I will provide the following information relevant to BET on Jazz:

a. the nature of the programming provided on BET on Jazz, and the decisions involved in targeting its niche;

b. the investment necessary to launch and operate BET on Jazz, and why BET on Jazz must be paid by cable operators for the right to carry the network;

c. the fundamental importance of carriage by cable systems to the ability of BET on Jazz to become commercially viable, and how extant channel capacity was a fundamental premise on which the network's business plan was founded; and

d. the impact on BET on Jazz of a further reduction in channel capacity.

The Nature of the Programming on BET on Jazz

7. There are over 350 programming networks competing for attention in today's market. In order to attract subscribers, new programming networks must target a segment of the population whose programming needs have not yet been adequately filled. In order to retain subscribers, programming networks must provide new and original programming that keeps subscribers coming back.

8. Cable systems generally have been receptive to launching niche programming sources. While programming networks and cable operators may have differing interests on such economic matters as affiliation fees and marketing support, both are eager to provide programming that attracts and retains subscribers.

9. BET on Jazz is the nation's first television programming service dedicated exclusively to jazz music and includes in-studio performances, documentaries, concert coverage and

celebrity interviews. Historically the jazz music genre is, and continues to be, a Black music art form and many of the artists featured on BET on Jazz are minority musicians. Specific examples of the programming currently offered on BET on Jazz include: Jazz Central, an original two-hour program featuring live concerts and in-depth interviews with the top names in jazz including Dr. Billy Taylor, Dave Brubeck, Roy Hargrove and Charlie Byrd; Jazz Discovery, a daily program that showcases undiscovered jazz talent; Blues, an hour-long look at legendary Blues artists such as B.B. King; and Jazz Fest, displaying jazz festivals from around the world. BET on Jazz conducted extensive research concerning subscriber demand for programming focusing on jazz music and determined that the jazz music niche was currently underserved by existing networks. BET on Jazz is dedicated to producing high quality, unique programming that subscribers will want to watch. In the words of President Bill Clinton, BET on Jazz "will help broaden the scope and appeal of jazz, further enriching one of America's most important and original offerings to the arts."

10. Fifty percent of the programming currently provided by BET on Jazz is original programming which is produced at its studio facilities in Washington, D.C. BET on Jazz intends to increase the current level of original programming as cable systems' channel capacity, and therefore distribution, increases.

Investment To Launch And Operate A Quality Programming Network

11. Launching a quality programming network requires a tremendous financial investment. By the time BET on Jazz is able to break even financially, it will have invested in excess of $50 million in start-up costs for the network including capital expenditures for production and

master control facilities, program production and acquisition, signal distribution and transmission, salaries, marketing, research and consulting. The original business plan for BET on Jazz projects that BET on Jazz will break even in 5 years at existing levels of channel capacity. Naturally, if the Commission promulgates a CLA rate formula that impacts the availability of channel capacity to new programming networks, BET on Jazz will not break even until a much later date, if at all.

12. Producing and acquiring original, high quality programming like that featured on BET on Jazz is extremely expensive. For example, production costs alone for a one-hour original program on BET on Jazz typically exceed $20,000.

13. The costs of operating BET on Jazz are further increased because of the network's commitment to high quality programming. BET on Jazz has invested an additional $15 million to create a state-of-the-art television production and distribution facility in which its original programming is produced.

Distribution And Revenues Necessary For Commercial Viability

14. Traditional, quality 24 hour programmers depend on a combination of affiliation fees and advertising revenues to be successful. After a two year promotional period during which BET on Jazz will be offered free of charge to cable systems that carry the network, approximately 40 percent of the revenues generated by BET on Jazz will come from affiliation fees. According to business plan projections based on extant and increased channel capacity, the remaining 60 percent will come from advertising revenues.

15. BET on Jazz cannot afford to pay cable operators for carriage indefinitely. In fact, after an initial promotional period, BET on Jazz must be paid for carriage if it is to remain commercially viable. Advertising revenues for niche programming are difficult to secure and therefore affiliation fees form an integral part of niche programming networks' revenues.

16. Carriage on cable systems nationwide is fundamental to the success of BET on Jazz. BET on Jazz must reach 15 to 20 million subscribers before it will begin making a profit. Carriage by all of the non-cable multichannel video providers would not give BET on Jazz nearly the subscriber penetration it needs. Although competition among multi-channel video providers is increasing, cable systems are the still the primary distributor with the greatest subscriber penetration.

17. Distribution is not only pivotal in generating affiliation fees, but also advertising revenues, both of which are tied to penetration. BET on Jazz needs annual advertising revenues that are at least 51 percent of its affiliation fees to remain commercially viable. However, advertising revenues are not available without subscriber penetration and subscriber penetration is not possible without channel capacity, creating a serious "catch 22" situation. Indeed, national advertising revenues are not available for programming networks with fewer than 10 million subscribers.

18. The fact that Tele-Communications, Inc. has an indirect, 26 percent minority ownership interest in BET on Jazz may help in subscriber penetration but this ownership interest is not sufficient to generate the level of viewership necessary to make the network commercially viable. First, Tele-Communications, Inc. has not signed up to carry BET on Jazz on even a fraction of its systems; in fact, at present, BET on Jazz not carried on any

systems owned by Tele-Communications, Inc. Moreover, contrary to popular belief, BET on Jazz must compete for carriage on systems owned by Tele-Communications, Inc. on a system-by-system basis. For each system, BET on Jazz must demonstrate how its programming fits the demographics of the system's subscribership. To the extent the Commission revises its CLA rate formula such that set asides are immediately filled, BET on Jazz is likely to be bumped from the limited number of systems on which it has carriage, including those owned by its minority investor, Tele-Communications, Inc.

19. The existing channel capacity of cable systems was a fundamental premise on which BET on Jazz structured its business plan. While the CLA rules have been in place since 1984, potential CLA programming networks have not been willing to pay the market rate for channels. The channels have therefore remained unused by CLA programmers for 12 years. As long as the channels remained unused, they remained available for quality programming networks who must be paid for carriage.

20. The Commission's implicit fee formula, which also priced CLA carriage based on market value, did not alter the status quo. Programming networks remained unwilling to pay the rate that cable operators were legally permitted to charge under the Commission's implicit fee formula. Nothing in Section 612 of the Communications Act or in the Commission's First Report and Order implementing the 1992 Cable Act gave programmers any indication that CLA programmers would be subsidized to ensure that CLA set-aside requirements were filled. To the contrary, programming networks had every indication that the industry was willing to concede that the economics of leased access are not conducive to its use.

21. Shopping networks, which generate revenues from sales to subscribers, can afford to pay cable systems for carriage indefinitely. Because they can afford to pay for carriage, shopping channels view CLA as an opportunity to obtain guaranteed access to cable systems at the expense of higher quality and more diverse programming sources. It is no wonder that shopping channels and infomercial providers are the primary entities filing in favor of reduced CLA rates. Shopping channels, however, have no greater right to carriage than other, quality programming networks. Shopping channels, such as ValueVision, have obtained carriage on cable systems and in some instances have affiliation agreements with multi-system cable operators. Moreover, shopping channels offer nothing in terms of quality, original, diverse programming like that offered by BET on Jazz.

Further Reduction In Channel Capacity

22. The primary reason given by cable systems for not carrying BET on Jazz is their lack of available channel capacity. Recently, cable systems have put programming agreements on a back-burner until after Commission resolves CLA issues.

23. A further reduction in channel capacity would be devastating. Not only would BET on Jazz be unable to increase its subscriber penetration, it would inevitably be bumped from cable systems on which it presently has carriage, including systems owned by its minority investor, Tele-Communications, Inc.

24. Cable systems have made it clear that new niche programming networks are the first networks that are likely to be displaced by CLA programming. Cable systems are not going to drop channels like CNN and ESPN that cater to a wider audience and have had sufficient

time to attract and develop loyal subscriber followings.

25. BET on Jazz would not be able to recover from the devastating effect that being dropped from cable systems would have on its ability to effectively market its programming and sell its advertising time.

26. If BET on Jazz is unable to reach a sufficient number of subscribers it will be unable to become profitable and its viability will be threatened. The jobs of the employees working for BET on Jazz will be jeopardized.

27. Essentially, the Commission's proposed CLA formula, which artificially spurs demand for CLA channels, will destroy the financial premise on which BET on Jazz was launched -- channel capacity .

I, Jefferi K. Lee, certify, under penalty of perjury, that the foregoing information is true and correct to the best of my knowledge, information and belief.

Jefferi K. Lee

May 15, 1996

EXHIBIT 1