COLE, RAYWID & BRAVERMAN, L.L.P.

ATTORNEYS AT LAW
SECOND FLOOR
1919 PENNSYLVANIA AVENUE, N W
WASHINGTON, D.C. 20006-3458
(202) 659-9750

JOHN P. COLE, JR.
BURT A. BRAVERMAN
ROBERT L. JAMES
JOSEPH R. REIFER
FRANCES J. CHETWYND
JOHN D. SEIVER
WESLEY R. HEPPLER
PAUL GLIST
DAVID M. SILVERMAN
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ROBERT N. WALTON
THOMAS SCOTT THOMPSON
SANDRA GREINER
NAVID C. HAGHIGHI*

*ADMITTED IN VIRGINIA ONLY

ALAN RAYWID
(1930-1991)

TELECOPIER
(202) 452-0067

May 17, 1996

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FEDERAL COMMUNICATIONS COMMISSION
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William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Comments of Outdoor Life Network, Speedvision Network, The Golf Channel, and BET on Jazz

Dear Mr. Caton:

Outdoor Life Network, Speedvision Network, The Golf Channel, and BET on Jazz ("Commenters") filed Comments with the Commission on May 15, 1996 in response to the Commission's *Further Notice of Proposed Rulemaking*, MM Docket No. 92-266, CS Docket No. 96-60, FCC 96-122 (released Mar. 29, 1996)(commercial leased access rulemaking proceeding). The Affidavits of Roger Williams and Christopher R. Murvin were attached to the Comments but were not signed. Signed copies of the Affidavits are enclosed. Commenters request the Commission to substitute the signed Affidavits for the unsigned Affidavits.

Thank you for your attention to this matter.

Sincerely,

Burt A. Braverman

Enclosure

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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 ROGER WILLIAMS

1. I, Roger Williams, am Executive Vice President and Chief Operating Officer of Outdoor Life Network ("Outdoor Life"), and Speedvision Network ("Speedvision"). In this capacity, I am familiar with all aspects of these networks' business operations, including their 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 these networks 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. Outdoor Life was launched on June 30, 1995, and is presently viewed by 3.1 million subscribers. Speedvision was launched on January 1, 1996, and is presently viewed by approximately one million subscribers. As recently launched, start-up programming networks, with relatively low subscriber penetration. Outdoor Life and Speedvision will be severely

impacted by the revised commercial leased access regulations that have been 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 principal premise on which Outdoor Life, Speedvision and other high quality, traditional program networks have been formed -- the availability of channel capacity on the nation's cable television systems for carriage of new, start-up networks.

5. Outdoor Life and Speedvision have already suffered setbacks as a result of federal regulation of cable systems. Must carry requirements initially caused a substantial decrease in the channel space on cable systems available to new, high quality programming networks. In addition, the Commission's benchmark regulations, which decreased the incremental amount that 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 add shopping and infomercial networks, which generated

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

unregulated revenues, in place of higher quality niche programming networks, such as Outdoor Life and Speedvision, whose rates and revenue generating potential were constrained by the rate regulations. Those rules, by restricting cable systems' revenue growth and even imposing rollbacks, also caused operators nationwide to forego planned system upgrades that would have expanded channel capacity and enabled systems to commence carriage of Outdoor Life and Speedvision. Now, the Commission's proposed revisions to the CLA rules threaten to deliver a final regulatory blow -- a blow from which Outdoor Life and Speedvision may not recover

6. In this affidavit, I will address the following points:

a. the nature of the programming exhibited on Outdoor Life and Speedvision, and the decisions involved in targeting the niches served by these networks;

b. the investment necessary to launch and thereafter operate Outdoor Life and Speedvision, and why these networks must charge affiliates for carriage of their programming;

c. the fundamental importance of carriage by cable systems to the networks' ability to become commercially viable, and how extant, available channel capacity was a fundamental premise on which the networks' business plans were established; and

d. the potentially fatal impact on Outdoor Life and Speedvision 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 Nature of the Outdoor Life and Speedvision Networks

7. There currently are over three hundred programming networks competing for

carriage on cable systems in the United States. 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 networks to provide in-depth coverage of subjects of special interest to their viewers.

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

9. Outdoor Life is a 24 hour niche programming network that is devoted to outdoor recreation, conservation, wilderness and adventure. Its programming focuses on outdoor and environmental activities and interests, such as wildlife and wilderness conservation, fishing, mountaineering, hunting, camping, backpacking, mountain biking, white water sports and skiing. For example, "Nature Watch" is a family oriented program that explores various aspects of animal behavior. "Charlie West's Outdoor Gazette" brings viewers to some of the most spectacular locations in the world and features a wide variety of activities that can be enjoyed in nature, including hiking historic trails, kayacking remote rivers, and underwater treasure hunting. "Environmental Forum" is a weekly public affairs program produced in Washington, D.C. that examines environmental issues and has featured such prominent guests as Secretary of Interior Bruce Babbitt and a number of members of Congress. "Scouting USA", a monthly program produced in conjunction with the Boy Scouts of America, features the broad array of

scouting programs and activities. "Echo Forum" is a half hour weekly program produced in association with the Massachusetts Institute of Technology and the John F. Kennedy School of Government at Harvard University, which will examine the impact of business and industry on the environment. Currently, more than six hundred hours of Outdoor Life's programming lineup consists of original programs such as these, and the network's business plan calls for the amount of original programming to increase to three thousand hours within three years.

10. Speedvision is a 24 hour network offering never-before-viewed programming targeted to boating, aviation, and automobile/motorcycle enthusiasts. Speedvision presents magazine and lifestyle programs, historical documentaries, current news and information, and instructional how-to programs, which comprise eighty percent of its program lineup. The network also provides coverage of competition events, many of which are not covered by other networks, which comprise the remaining twenty percent of its programming. Speedvision's programs include "Planes of Fame," a historical series on the pilots and planes of today and days gone by; "Wild About Wheels," a 26-part series that explores the relationship between man and machine, industrial design and product success in the marketplace; "Sailor's Log," an 18-part series that teaches the basics of sailing; and "American Thunder," an expo on the American motorcycle lifestyle. In addition to these programs, Speedvision is committed to providing current news and information programming seven nights a week no later than the fourth quarter of 1997, so that its viewing audience will have the opportunity to receive news and information on a daily basis that is not exhibited elsewhere on any cable or broadcast television media. Speedvision's business plan calls for its program lineup to feature seventy percent of original programming by the end of its first year of operation.

11. The demographics of the viewing markets for Outdoor Life and Speedvision were studied thoroughly prior to launching these channels It was determined that viewing needs in the networks' respective interest areas were underserved. For example, according to surveys conducted by Beta Research Corp., Outdoor Life was rated number one of 18 emerging networks, was the second most requested network among all adults ages 18 to 49, and was the third most requested among all non-subscribers ages 18 to 34. Consumer interest in the type of programming offered on Speedvision is evidenced by the over 250 vehicle-based magazine titles that are found on American newsstands, as well as the fact that there are more than 600,000 licensed private pilots, and more than 6,500,000 owners of motor and/or sailboats, in the U.S.

12. The Speedvision and Outdoor Life networks were created to fill the unserved, or underserved, needs and interests of their respective viewers. No other networks offer the breadth, depth or quality of coverage of these interests as do Outdoor Life and Speedvision.

Investment To Launch Quality Programming Network

13. Launching a quality programming network requires a tremendous financial investment. Under the Outdoor Life and Speedvision business plans, the networks will not break even financially until their fifth years of operation, respectively. By that time, the networks will have invested more than $180 million combined.

14. Original programming is far more costly to produce than re-runs and library material, or home-shopping and infomercial programming. Outdoor Life will spend in excess of $15 million in its first year of operation to produce and acquire original programming, and even more in successive years. Speedvision will spend in excess of $17 million on original programming in its first year, and estimates that it will spend $20 million each year thereafter.

Each original one hour program produced on Outdoor Life averages $25,000-30,000, and some programs are substantially more expensive. For example, it costs $100,000 to produce each one hour special in Outdoor Life's "Adventure Quest" series. A typical three hour live event on Speedvision costs between $150,000 to $200,000 to produce.[2] While terribly expensive, Outdoor Life and Speedvision have determined that original, differentiated programming is the best way to serve the needs and interests of, and to attract and retain, their viewers.

15. Outdoor Life's and Speedvision's costs are further increased due to the networks' commitment to maximizing the quality of every aspect of their programming. For example, both networks feature programs that are filmed at distant locations around the world, which substantially increases their programming production and acquisition costs. Likewise, both networks have invested in state-of-the-art digital production facilities. These and other attributes account not only for the recognized excellence of the networks, but also for their substantial programming expenses, which will exceed $60 million by the end of the networks' second years of operation.

Distribution And Revenues Necessary For Commercial Viability

16. Conventional, quality 24 hour networks depend on a combination of affiliation fees and advertising revenues to attain commercial viability. Because of their very sizeable launch costs and continuing programming expenditures, Outdoor Life and Speedvision must charge cable operators monthly licensing fees for the right to distribute the networks' programming. Unlike a home shopping network or infomercial programmer, whose programming and production costs

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[2]In addition to being very expensive to produce, live event programming has a limited "shelf life". Nonetheless, Speedvision makes this investment in order to serve its viewers.

are substantially less and that generates revenues from the sale of featured products, Outdoor Life and Speedvision could not possibly pay cable operators anything, or forego the right to charge cable operators licensing fees, for the right to distribute the networks' programming over cable systems.

17. Distribution is the key to attaining the revenues necessary to sustain the operation of the networks; and carriage on cable systems nationwide is the key to distribution. Outdoor Life and Speedvision must each reach 20 to 25 million subscribers before they will break even. Consequently, carriage by even all of the non-cable multichannel video providers still would not give the networks nearly the subscriber penetration they need to generate sufficient monthly licensing fees to become commercially viable. Cable systems are the still the primary distributor with the largest subscriber penetration and, thus, carriage by cable systems is central to Outdoor Life's and Speedvision's survival.

18. Distribution is pivotal in generating not only affiliate fees, but also advertising revenues, both of which are directly tied to subscriber penetration. Speedvision and Outdoor Life each need to attain significant advertising revenues to become commercially viable. Each network needs a penetration of at least twenty million full time subscribers to attract national advertisers such as soft drink companies, soap and detergent companies, automobile manufacturers, and gasoline, oil and tire companies. If distribution is artificially suppressed due to Commission regulations of the sort currently proposed, the networks will be unable to generate the level of advertising revenues necessary to sustain their operations.

19. Although the fact that Outdoor Life and Speedvision are substantially owned by several cable operators (Comcast, Cox and Continental) obviously will help in gaining subscriber

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

Christopher R. Murvin

May 15, 1996