

17. Dr. Furchtgott-Roth further claims that MVPDs { [REDACTED] } MVPDs such as Comcast place value on networks to the extent to which those networks enable them to attract, retain, and sell services to their customers. Ratings are but one factor in making these assessments, and, standing alone, do not capture the extent to which a given network helps the MVPDs attract, retain, and sell services to their customers. A simple example illustrates the point: Although in 2014 Cartoon Network had slightly { [REDACTED] } average 24-hour ratings than ESPN, ESPN's average license fee was about { [REDACTED] } than that of Cartoon Network.¹¹

18. In his consideration of ratings, Dr. Furchtgott-Roth appears to find it noteworthy that EstrellaTV has { [REDACTED] } He cites no support for the proposition that { [REDACTED] } are a benchmark of value in the television industry, and I am aware of none. In any case, EstrellaTV's ratings are frequently *below* { [REDACTED] } in various local markets and various categories of ratings.¹³

19. Most importantly, Dr. Furchtgott-Roth does not tie EstrellaTV's ratings to the value to Comcast of carrying EstrellaTV. He provides no economic analysis to determine whether the price of EstrellaTV carriage sought from Comcast by LBI exceeded the value of EstrellaTV carriage to Comcast or any other MVPD. This omission renders his opinion

¹⁰ Furchtgott-Roth Report ¶¶ 16-17 (footnote omitted).

¹¹ SNL Kagan, TV Network Summary.

¹² Furchtgott-Roth Report ¶ 20 (footnote omitted).

¹³ See *infra* ¶¶ 23-26.

meaningless from an economic perspective and under the Commission's rules and relevant precedent.¹⁴

20. Finally, one question that ratings data can answer is whether discontinuing EstrellaTV carriage in three DMAs had a large enough effect on Telemundo's or NBC Universo's viewership to be detectable in the ratings data on which advertisers rely. Below I show that it did not. Although these data only became available after the discontinuation of EstrellaTV carriage in the pertinent DMAs, the analysis of the data serves as powerful economic evidence that reinforces my conclusion that Comcast did not reject EstrellaTV's demand in order to favor either Telemundo or NBC Universo.

C. Dr. Furchtgott-Roth's Claim That "Estrella TV is one of the most popular Spanish-language TV networks" is Misleading.

21. Putting aside the fundamental flaw in Dr. Furchtgott-Roth's argument that the ratings of programming determine the value to MVPDs of carrying the programming, there are additional critical flaws in Dr. Furchtgott-Roth's Nielsen-based analysis of the ratings of EstrellaTV relative to other Spanish language networks.

22. First, Dr. Furchtgott-Roth appears to have cherry-picked the Nielsen data to make the comparison more favorable to EstrellaTV. For example, Dr. Furchtgott-Roth performs a quantitative ratings comparison on primetime and primetime sweeps period ratings, but does not perform the comparison of total-day ratings, where EstrellaTV performs less well. He offers no explanation for ignoring the larger period. Dr. Furchtgott-Roth also considers EstrellaTV's ratings in the DMAs where EstrellaTV is broadcast over the air but ignores EstrellaTV's

¹⁴ See *supra* note 3.

popularity (or lack thereof) in national ratings, which incorporate EstrellaTV viewership outside of these DMAs.

23. I present more comprehensive ratings comparisons between EstrellaTV and other Spanish language networks in Exhibits 1-5, which are attached as Appendix 2. The exhibits provide ratings comparisons across primetime and total-day ratings as well as across household and persons 18 to 49 ratings.¹⁵ I also examine national ratings, ratings for the three DMAs that are at issue in this case, and New York DMA ratings. My ratings analysis shows that EstrellaTV's ratings significantly lag behind ratings of the other Spanish language broadcast networks, including Telemundo on both a national and local level.¹⁶

24. Exhibit 1 shows the national total-day ratings for EstrellaTV and other Spanish language broadcast networks that Dr. Furchtgott-Roth references in the tables to his Report—{REDACTED} Exhibit 1 demonstrates that in 2014 Telemundo's ratings were {REDACTED} than those achieved by EstrellaTV on a national Total Day basis {REDACTED}

¹⁵ Nielsen ratings data are based on a survey of U.S. households that record their viewership of networks. My Nielsen data analysis is based on the Nielsen ratings data that have been provided to me by Comcast. The data measure ratings for Spanish language networks on a monthly basis at both the DMA level and the national level. I calculate annual average Nielsen ratings for a network by taking an average of the monthly Nielsen ratings for the network. My annual average ratings calculations require that at least 10 months of monthly ratings for the network are available in the year.

¹⁶ My analysis of Nielsen ratings in the Houston, Denver, and Salt Lake City DMAs shows that viewership of Spanish language networks {REDACTED} This result may be explained by the relatively large percentage of over-the-air TV broadcast viewership in the three DMAs and a disproportionately high viewership of over-the-air broadcasts by Hispanic households. (See http://www.nab.org/mpres/BroadcastTVandRadio-HispanicCommunities_NAB.pdf, accessed on May 27, 2016.) According to SNL Kagan U.S. Multichannel Market List data, as of Q1 2015, households that viewed TV via over-the-air broadcasts accounted for {REDACTED} percent of TV households in the Houston DMA, {REDACTED} percent of TV households in the Denver DMA, {REDACTED} percent of TV households in the Salt Lake City DMA, and {REDACTED} percent of TV households in the New York DMA. EstrellaTV over-the-air full power broadcasts are available in the Houston, Denver, and Salt Lake City DMAs. Thus, over-the-air broadcasts in the three DMAs provide another option for households wishing to view EstrellaTV.

Even limiting attention to primetime, Telemundo attracts {REDACTED} the audience of EstrellaTV in that time period {REDACTED}

25. EstrellaTV’s Nielsen ratings are relatively weak even in major DMAs where Comcast carries the network. Exhibit 5 shows the 2014 average Nielsen ratings in the New York DMA, which has approximately {REDACTED} Hispanic households and is ranked second in terms of the number of Hispanic households behind only the Los Angeles DMA.¹⁸ In the New York DMA in 2014, Telemundo’s Nielsen ratings were {REDACTED} than those of EstrellaTV (e.g., Total Day ratings: {REDACTED})

26. The ratings in the three DMAs at issue in this proceeding tell a similar story. Telemundo’s viewership in Houston in 2014 was {REDACTED} EstrellaTV’s (in Comcast subscribers), whether measured on a primetime {REDACTED} In Salt Lake City in 2014, Telemundo’s viewership was {REDACTED} EstrellaTV’s on a Total Day basis {REDACTED} as well as surpassing EstrellaTV’s viewership on a primetime basis {REDACTED} In Denver in 2014, Telemundo’s viewership

¹⁷ It is important to note that the relative weakness in the nation-wide demand for EstrellaTV’s programming cannot be attributed to Comcast’s carriage of the network as Comcast’s subscribers account for a relatively small share of the nation-wide Spanish language TV audience. For example, in 2014 Comcast subscribers accounted for about {REDACTED} of Telemundo’s national viewership. (Based on Telemundo viewership as measured by Nielsen ratings (household, total day, live + same day viewing) for Comcast households as a percentage of Telemundo viewership by all U.S. TV households.) It should also be noted that Hispanic households rely disproportionately in comparison to other U.S. households on over-the-air signals for television viewership (thereby bypassing MVPDs). (See http://www.nab.org/mpres/BroadcastTVandRadio-HispanicCommunities_NAB.pdf, accessed on May 27, 2016.)

¹⁸ See <http://www.tvb.org/Portals/0/media/file/DMA/2015-2016-dma-ranks-hispanic.pdf> (accessed on May 21, 2016).

¹⁹ See Exhibit 2.

²⁰ See Exhibit 4.

surpassed EstrellaTV's on a Total Day basis { [REDACTED] } although EstrellaTV performed better than Telemundo during the narrower primetime period { [REDACTED] }

D. LBI Offers No Marketplace Evidence Demonstrating That Comcast Should Have Known of EstrellaTV's Value.

27. LBI's Complaint alleges that the evidence of Comcast's discrimination against EstrellaTV is apparent in the difference between Comcast's carriage of EstrellaTV and that of other MVPDs that do not own "competing Spanish language channels."²² In particular, the Complaint alleges that: "[t]here can be only one rational explanation for this demonstrable gulf between Comcast's unique assessment that Estrella TV *lacks* value and the directly contrary judgment of so many non-conflicted companies that Estrella TV *provides* value: Comcast owns competing services Telemundo and NBC Universo, whereas the many MVPDs and broadcasters which have freely and consistently decided to distribute Estrella TV own no competing Spanish language channels."²³

28. This argument is incomplete and invalid as a matter of economics. Not only does LBI fail to show that Comcast ignored a net benefit from carrying EstrellaTV, but it also does not demonstrate that there was marketplace evidence that should have caused Comcast to reach a different conclusion. LBI does not assert or show that any other MVPD has chosen to carry EstrellaTV on the same terms that LBI demanded from Comcast.

29. I have seen no evidence that any other MVPD pays prices comparable to those sought from Comcast by LBI for carriage of EstrellaTV. Data from SNL Kagan (a data source

²¹ See Exhibit 3.

²² *Carriage Complaint* ¶ 57.

²³ *Carriage Complaint* ¶ 57 (emphasis in original).

that Dr. Furchtgott-Roth relies on for his analysis) { [REDACTED] } SNL Kagan estimates that in 2015 EstrellaTV received { [REDACTED] } in “network compensation” (or about { [REDACTED] } per month). SNL Kagan also estimates that in 2015 EstrellaTV had about { [REDACTED] } in net advertising revenue out of about { [REDACTED] } in total net operating revenue, leaving only about { [REDACTED] } in non-advertising revenue in 2015. Such an amount implies only *de minimis* payments by MVPDs for carriage of EstrellaTV. By contrast, the evidence indicates that MVPDs pay significantly more in fees for Telemundo. SNL Kagan estimates that in 2015 Telemundo had about { [REDACTED] } in net advertising revenue out of about { [REDACTED] } in total net operating revenue, which imply about { [REDACTED] } in non-advertising revenue in 2015.

30. By contrast, under LBI’s November 18, 2014 proposal, starting in 2015 Comcast would have had to pay { [REDACTED] }
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

{ [REDACTED] } Under LBI’s subsequent February 19, 2015 proposal (made immediately before LBI pulled Estrella TV’s signals from the Houston, Denver, and Salt Lake City DMAs), Comcast

²⁴ See email from Jake Martinez of LBI to Michael Nissenblatt of Comcast on November 18, 2014 (*Carriage Complaint Exhibit 19*).

would have had to incur a cost of about { [REDACTED] } per year to carry EstrellaTV in the affected DMAs.²⁵

31. { [REDACTED] }
 { [REDACTED] } As such, the available evidence reinforces my conclusion above that there was no discrimination by Comcast in refusing LBI’s terms for carriage of EstrellaTV, and it supports a finding that Comcast’s decision not to pay LBI for EstrellaTV was reasonable and justified by business considerations independent of Telemundo and NBC Universo.

32. Similarly, marketplace evidence shows that other MVPDs do not distribute EstrellaTV at the level LBI demanded from Comcast. For example, although the satellite providers DIRECTV and Dish, similar to Comcast, carry local broadcasts of EstrellaTV in many DMAs, DIRECTV’s and Dish’s channel lineups indicate that they do not carry EstrellaTV in their national Spanish language tiers.²⁶ By contrast, both DIRECTV’s and Dish’s national Spanish language tiers include Telemundo and NBC Universo.²⁷ Thus, even though LBI demanded that Comcast give EstrellaTV { [REDACTED] } LBI has not

²⁵ See email from Jake Martinez of LBI to Michael Nissenblatt of Comcast on February 19, 2015. (*Carriage Complaint* Exhibit 19).

²⁶ See <http://www.dishlatino.com/comparar-canales/>;
http://directvenespanol.com/vendor/pdf/optimo_mas.pdf;
http://directvenespanol.com/vendor/pdf/mas_ultra.pdf,
http://directvenespanol.com/vendor/pdf/lo_maximo.pdf (downloaded on May 30, 2016)

²⁷ See <http://www.dishlatino.com/comparar-canales/>;
http://directvenespanol.com/vendor/pdf/optimo_mas.pdf;
http://directvenespanol.com/vendor/pdf/mas_ultra.pdf,
http://directvenespanol.com/vendor/pdf/lo_maximo.pdf (downloaded on May 30, 2016)

received anything like that from these two other large MVPDs, neither of which owns a Spanish-language network.²⁸

33. Moreover, under LBI's February 19, 2015 proposal, Comcast would have had to

[REDACTED]

[REDACTED]³⁰ Thus, the available evidence shows neither significant carriage of EstrellaTV by other MVPDs [REDACTED] nor significant consumer demand for the network in those markets.³¹

34. Further evidence of Comcast's non-discrimination with respect to carriage of Spanish language networks may be seen from the fact that Comcast's carriage of Telemundo and NBC Universo (or its predecessor, Mun2) has [REDACTED] after the 2011

²⁸ *Carriage Complaint* ¶ 37.

²⁹ See email from Jake Martinez of LBI to Michael Nissenblatt of Comcast on February 19, 2015. (*Carriage Complaint* Exhibit 19). See also Declaration of Michael Nissenblatt Exhibit 1.

³⁰ My review of Nielsen ratings data for the [REDACTED] DMAs for the period from January 2013 to March 2016 reveals no discernable viewership of EstrellaTV in these DMAs. I understand that the Nielsen ratings data for the [REDACTED] DMA capture only limited viewership data in the DMAs.

³¹ The absence of evidence of any significant viewership of EstrellaTV by subscribers of other MVPDs in the [REDACTED] DMAs is also at odds with LBI's claim that other MVPDs afford more favorable carriage to Estrella TV than does Comcast. It is worth noting that LBI's claim of EstrellaTV carriage by Time Warner Cable in [REDACTED] (*Carriage Complaint* Exhibit 4), [REDACTED] is contradicted by Time Warner Cable's channel lineup in [REDACTED]. See Time Warner Cable's April 2016 channel lineup in [REDACTED]. Note that Time Warner Cable's channel lineup indicates carriage of both Telemundo and NBC Universo.

acquisition by Comcast of a majority stake in NBC Universal (which owned Telemundo and Mun2).³²

35. In sum, the available economic evidence supports the absence of any discriminatory conduct by Comcast in rejecting the terms demanded by LBI for carriage of EstrellaTV.³³ LBI has not demonstrated that Comcast knew or should have known of any net benefit to paying for EstrellaTV but ignored such benefits to bolster Telemundo or NBC Universo.

IV. LBI HAS NOT PROVIDED ANY ECONOMIC EVIDENCE THAT THERE WAS MATERIAL COMPETITION BETWEEN ESTRELLATV AND EITHER TELEMUNDO OR NBC UNIVERSO

A. Telemundo and NBC Universo Are Unlikely to Obtain Material Benefit From Comcast’s Limiting Carriage of EstrellaTV.

36. As a matter of economics, Comcast could only have an incentive to discriminate against EstrellaTV in favor of its affiliated networks, Telemundo and NBC Universo, if Telemundo and NBC Universo faced significant competition from EstrellaTV.³⁴

37. If there were significant competition for viewers and advertisers between EstrellaTV and Telemundo or between EstrellaTV and NBC Universo, limiting EstrellaTV’s

³² See { [REDACTED] }

³³ LBI’s Complaint also alleges that Comcast made a “demand that Estrella TV surrender its digital rights in Estrella TV programming in return for Comcast carriage of that programming” and that the “demand” violates rules that prohibit the acquisition of a “financial interest” as a condition of carriage. Carriage Complaint ¶¶ 41, 84. I understand that the alleged “demand” by Comcast was actually a request by Comcast for *non-exclusive* rights to EstrellaTV digital content. From an economic perspective, granting such non-exclusive digital content rights is equivalent to granting a license (rather than selling a financial interest in an asset), similar to the type of license that EstrellaTV grants to MVPDs for the right to distribute its programming. Comcast’s request for such rights in a carriage negotiation is thus consistent with reasonable business judgment.

³⁴ Dennis Carlton, “A General Analysis of Exclusionary Conduct and Refusal to Deal--Why Aspen and Kodak Are Misguided,” *Antitrust Law Journal* 68, pp. 659-683, 2001; and Michael Whinston, “Tying, Foreclosure, and Exclusion,” *American Economic Review* 80, pp. 837-859, 1990.

distribution may benefit Telemundo or NBC Universo by: (1) increasing Telemundo’s or NBC Universo’s viewership; or (2) weakening the constraints on prices that Telemundo or NBC Universo charge advertisers. Conversely, the absence of significant competition between EstrellaTV and Telemundo or NBC Universo means that limiting EstrellaTV’s distribution does not materially benefit Telemundo and NBC Universo, and thus Comcast would have no economic incentive to limit EstrellaTV’s distribution to benefit its affiliated networks. My analysis shows that Comcast’s affiliated networks are unlikely to reap material benefits from a reduction in EstrellaTV carriage by Comcast, thus contradicting claims of discriminatory motives for Comcast’s carriage decisions with regard to EstrellaTV.

B. Dr. Furchtgott-Roth Provides No Valid Evidence For His Claim That

[REDACTED]

38. Most fundamentally, Dr. Furchtgott-Roth provides no evidence demonstrating significant competition between EstrellaTV and Comcast’s affiliated networks Telemundo or NBC Universo. He has not performed any economic analysis to determine whether Comcast has any economic incentives to engage in carriage discrimination against EstrellaTV, nor has he analyzed whether Telemundo and NBC Universo have benefited in any material way from the alleged discrimination.

39. Dr. Furchtgott-Roth claims that { [REDACTED]
[REDACTED]
[REDACTED] } That is hardly surprising as there appears to be no dispute that Comcast no longer carries EstrellaTV in those DMAs. It is also irrelevant to the questions at hand. As noted above, a relevant question here is not whether this decision had any

³⁵ Furchtgott-Roth Report ¶ 12.

effect on EstrellaTV viewership—as it surely did—but whether there is economic evidence to support any inference that the reason Comcast made its decision was to favor Telemundo or NBC Universo. Dr. Furchtgott-Roth’s observation says nothing about the competition between the networks.

40. Dr. Furchtgott-Roth further claims that { [REDACTED] }
 { [REDACTED] } Here, too, the evidence he provides actually supports the conclusion that there is no direct effect on Telemundo ratings of the discontinuation of EstrellaTV carriage. In particular, he concludes that the { [REDACTED] }
 { [REDACTED] }
 { [REDACTED] } If EstrellaTV were an important competitor for Telemundo, such that its removal would have a strong effect on Telemundo ratings, then one should expect to see this pattern consistently. Hence, { [REDACTED] }
 { [REDACTED] } refutes the claim of significant competition between the networks. Instead, given that the changes in Telemundo’s ratings { [REDACTED] } between Houston and Denver, one should look for explanations that correspondingly { [REDACTED] } between the two cities, rather than somehow connecting these { [REDACTED] } patterns to an event (removal of EstrellaTV from Comcast) that was common across the cities. Dr. Furchtgott-Roth’s inference is simply not reliable economic analysis.

³⁶ Furchtgott-Roth Report ¶ 12.

³⁷ Furchtgott-Roth Report ¶ 67.

³⁸ Dr. Furchtgott-Roth does not even attempt to analyze any effects on Telemundo in Salt Lake City, claiming that he was unable to obtain Salt Lake City ratings, even though such ratings data are readily available. Furchtgott-Roth Report fn. 24.

41. Indeed, it is noteworthy that Dr. Furchtgott-Roth's report does not show any regression analyses to determine whether { [REDACTED] }
 [REDACTED]
 [REDACTED] } An appropriately conducted regression analysis can be a reliable statistical test for identifying a relationship between two or more events, and Dr. Furchtgott-Roth presents a number of such analyses in his Report, albeit not on this issue.³⁹ One can perform a regression analysis of the effects of EstrellaTV carriage on Telemundo's or NBC Universo's viewership, as I demonstrate in the next section. What my regression analyses show is that there is no statistically significant increase in either Telemundo's or NBC Universo's Nielsen ratings as a result of Comcast's discontinuation of EstrellaTV carriage in the Houston, Denver, and Salt Lake City DMAs.

C. A Direct Test of Competition Indicates That Telemundo and NBC Universo Did Not Discernibly Benefit From Comcast's Discontinuation of EstrellaTV Carriage in Houston, Denver, and Salt Lake City.

42. In contrast to Dr. Furchtgott-Roth, I test the extent of competition between EstrellaTV and Telemundo and between EstrellaTV and NBC Universo by analyzing how EstrellaTV's withdrawal of retransmission consent for carriage by Comcast in the Houston, Denver, and Salt Lake City DMAs affected the Nielsen ratings of Telemundo and NBC Universo. Under this test, there would be evidence of significant substitution and competition between EstrellaTV and Telemundo (or NBC Universo) if EstrellaTV's reduced distribution in the three affected DMAs significantly increased Telemundo's (or NBC Universo's) ratings among Comcast's cable subscribers in those DMAs, after accounting for all other factors that explain Telemundo's and NBC Universo's viewership in those DMAs.

³⁹ Furchtgott-Roth Report, Tables 18-26

43. I perform this test using monthly Nielsen ratings data for the three affected DMAs for the period from January 2013 through March 2016. The Nielsen ratings data measure Telemundo and NBC Universo viewership for Comcast subscribers in a DMA and also separately for TV households in the DMA for subscribers of other MVPDs. Hence, the non-Comcast households, which were not affected by Comcast's carriage decisions, provide a control group, with the pattern of ratings over time for this group indicating what would have happened to Telemundo and NBC Universo ratings *absent* Comcast's carriage decisions in the affected DMAs. I implement a regression analysis that compares the pattern of ratings for Comcast households (the "treatment" group) to the pattern for this control group, before and after Comcast stopped carrying EstrellaTV in the affected DMAs on February 19, 2015, thus isolating the effect of Comcast's discontinuation of EstrellaTV carriage.⁴⁰ I perform this test using regression analysis for both Telemundo and NBC Universo ratings. I provide the technical details of the regression analysis in Appendix 3.

44. As seen in Exhibit 6 (shown in Appendix 3), the results of my regression analysis indicate that there was no statistically significant increase in Telemundo and NBC Universo Nielsen ratings in the affected DMAs as a result of the discontinuation of Comcast's carriage of EstrellaTV in the affected DMAs. Hence, the analysis implies that there was no statistically detectable effect on Telemundo or NBC Universo ratings from the discontinuation of Comcast's carriage of EstrellaTV in the affected DMAs. This finding is particularly telling here: As discussed above, advertisers rely on Nielsen data to purchase advertising on networks, and advertising revenues for the networks are a function of their Nielsen ratings, so the absence of a

⁴⁰ This type of analysis is standard in economics literature. It is commonly referred to as a "difference in differences" regression. See, e.g., Cameron, A. Colin; Trivedi, Pravin K. (2005). *Microeconometrics: Methods and Applications*. Cambridge University Press, Chapter 22.

statistically detectable effect in Nielsen data refutes any claim that Telemundo or NBC Universo benefited from the discontinuation of Comcast's carriage of EstrellaTV in the affected DMAs. Therefore, my analysis of Nielsen ratings data indicates an absence of any significant competition between EstrellaTV and Comcast's affiliated networks Telemundo and NBC Universo.

D. Significant Differences Between EstrellaTV and Telemundo and NBC Universo Further Point to a Lack of Significant Competition Between the Networks.

45. Other significant differences between EstrellaTV and Telemundo and NBC Universo provide further evidence that there is no significant competition between the networks. In this section, I provide some important examples of those differences.

46. The fact that EstrellaTV, Telemundo, and NBC Universo are all Spanish language networks does not necessarily mean that the networks have similar appeal, content, and viewer audience. In fact, Comcast carries more than 50 different Spanish language cable and broadcast networks.⁴¹ Individual Spanish language networks may be competing for different sets of viewers and may have viewer audiences that differ in their demographics. It is therefore useful, as corroboration of my competition analysis based on Nielsen data, to examine whether the differences (and similarities) between EstrellaTV, Telemundo and NBC Universo provide further support for the view that there is an absence of significant competition between the networks. I find that there are significant differences between EstrellaTV and Telemundo and between EstrellaTV and NBC Universo and that these differences are consistent with an absence of significant competition between the networks.

⁴¹ See { [REDACTED]

47. Initially, my analysis of ratings, presented above, shows that the Nielsen ratings for Telemundo are substantially higher than those of EstrellaTV both on the national and local DMA level. Ratings for NBC Universo are generally lower than both Telemundo and EstrellaTV.

48. Another relevant measure that distinguishes TV networks is programming expenditure or the amount that networks spend to acquire or produce programming content. As a matter of economics, networks are willing to spend more on programming when they anticipate higher demand for their programming as a result. All else being equal, greater programming expenditures imply more valuable programming content for a network. According to SNL Kagan data, in 2014 EstrellaTV's programming expenditures were about {REDACTED} and Telemundo's programming expenditures were about {REDACTED} including for expensive sports rights (such as World Cup games) and telenovelas. This is a material difference in programming expenditure. NBC Universo's programming expenditures were about {REDACTED} also higher than EstrellaTV's {REDACTED} in programming expenditures for 2014.

49. I understand that there is also testimony that EstrellaTV offers programming that has greater appeal for Hispanic households of Mexican descent than for other Hispanic households. I have been asked by counsel to review Nielsen data regarding the ethnic composition of viewer audience for EstrellaTV and Telemundo.⁴² The data show that in 2014 Mexican Hispanic households accounted for {REDACTED} of EstrellaTV's total viewership and for {REDACTED} of Telemundo's total viewership. The data also show that in 2015 Mexican Hispanic households accounted for {REDACTED} of EstrellaTV's total viewership, for {REDACTED} of Telemundo's

⁴² My analysis is based on Nielsen data that measure annual national viewership of EstrellaTV, Telemundo, and NBC Universo by Hispanic households and by Hispanic households of Mexican descent. The Nielsen viewership data are based on total-day viewership and live viewing + viewing within seven days.

total viewership, and for {█} of NBC Universo’s total viewership (the first year data was available). The Nielsen data also show that as of 2014 and 2015, individuals of Mexican descent accounted for approximately {█} of Hispanic TV households.

50. LBI’s assertions about overlapping advertisers across the networks do not, in fact, demonstrate significant competition between EstrellaTV and Telemundo or NBC Universo. LBI’s Complaint alleges that EstrellaTV’s programming, Telemundo’s programming, and NBC Universo’s programming compete by “targeting” the same advertisers,⁴³ listing 16 advertisers, including Ford, AT&T, Anheuser Busch, and others, that the Complaint alleges are shared by the three networks.⁴⁴ However, the existence of common advertisers among networks does not prove competition by the networks for the advertisers. Just because Ford purchases advertising on both EstrellaTV and Telemundo does not mean that Ford is choosing between EstrellaTV and Telemundo in purchases of advertising on TV networks. Nor does it mean that EstrellaTV and Telemundo are competing for Ford advertising or that EstrellaTV and Telemundo “target” Ford as an advertiser. Ford also advertises on major broadcast networks such as CBS, obviously not a Spanish language network; thus, the presence of large national advertisers on any one network is not informative. Indeed, the types of advertisers that the Complaint alleges are shared among the three networks tend to have very large advertising budgets for many different products and advertise extensively on numerous cable networks, broadcast networks, and other advertising media. For example, Ford’s advertising expenditure in 2014 was approximately \$2.5 billion.⁴⁵

⁴³ *Carriage Complaint* ¶ 24.

⁴⁴ *Carriage Complaint* Exhibit 12. The list of “share[d]” advertisers in Exhibit 12 of the *Carriage Complaint* includes: MetroPCS, Ford, Mars, AT&T, Anheuser Busch, Colgate, Clorox, Constellation Brands, Dish, L’Oreal, GM, P&G, Miller Coors, Samsung, State Farm, and Wendy’s.

⁴⁵ See <http://adage.com/article/advertising/big-spenders-facts-stats-top-200-u-s-advertisers/299270/> (accessed on May 26, 2016).

According to Nielsen Ad Intel data, in 2014, Ford spent {REDACTED} in advertising on Telemundo, {REDACTED} in advertising on EstrellaTV, and {REDACTED} in advertising on NBC Universo. Thus, Ford’s advertising expenditures for the three networks in 2014 accounted for {REDACTED} (Telemundo), {REDACTED} (EstrellaTV), and {REDACTED} (NBC Universo) of Ford’s 2014 total advertising expenditures. The notion that advertisers such as Ford are choosing solely (or even primarily) between Telemundo and EstrellaTV or between NBC Universo and EstrellaTV for their advertisements is without basis.

51. I should also note that the mere fact that an advertiser is common between two networks is not indicative of the amount of the advertiser’s expenditures on the two networks or whether a common advertiser contributes a significant amount to overall advertising expenditures on the networks. For example, the Complaint lists Clorox as an advertiser shared by Telemundo and EstrellaTV.⁴⁶ However, in 2014, according to Nielsen Ad Intel data, Clorox purchased {REDACTED} in advertising on Telemundo (accounting for about {REDACTED} of Telemundo’s advertising sales) and only about {REDACTED} in advertising on EstrellaTV (accounting for about {REDACTED} of Estrella TV’s advertising sales). Thus, the Complaint’s list of “large advertisers” that EstrellaTV shares with Telemundo and NBC Universo is incomplete because it does not account for differing levels of advertising expenditures among the networks.

52. The Complaint’s list of shared “large advertisers” also ignores the differences in the proportionality of the advertisers’ expenditures across networks (meaning their share of the overall advertising expenditures on the network). For example, in 2014, the advertising expenditures by Wendy’s (one of the shared “large advertisers” listed by the Complaint) accounted for about {REDACTED} of total advertising expenditures on Telemundo and about {REDACTED} of

⁴⁶ *Carriage Complaint* Exhibit 12.

total advertising expenditures on EstrellaTV.⁴⁷ Likewise in 2014, the advertising expenditures by State Farm (another of the shared “large advertisers” listed by the Complaint) accounted for about {█} of total advertising expenditures on Telemundo and about {█} of total advertising expenditures on EstrellaTV.⁴⁸ The differences in the proportionality of purchases for these advertisers across Telemundo and EstrellaTV argue against a claim that Telemundo and EstrellaTV both “target” Wendy’s and State Farm.

V. CONCLUSION

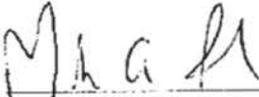
53. Based upon my analysis set forth above, I conclude that LBI and its expert have not offered economic evidence to show that Comcast’s decision to reject the terms sought by LBI for carriage of EstrellaTV was based on anything other than rational business judgment. LBI does not provide any empirical support that the benefits to Comcast from the carriage of EstrellaTV on the terms sought outweighed the costs Comcast would have to incur in license fees. If anything, the available evidence suggests that the price of carriage demanded by LBI exceeded the prices paid by other MVPDs, further supporting a conclusion that Comcast made a rational business decision. I also conclude that LBI and its expert has failed to offer any credible economic evidence of competition between EstrellaTV and either Telemundo or NBC Universo. The evidence instead suggests only that Telemundo or NBC Universo would be unlikely to gain any significant benefit from Comcast’s limiting EstrellaTV carriage in the three DMAs at issue, and this implies that Comcast would have no discriminatory incentive to restrict EstrellaTV’s carriage.

⁴⁷ Source: Nielsen Ad Intel data.

⁴⁸ Source: Nielsen Ad Intel data.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 5th day of June, 2016.



Mark A. Israel

APPENDIX 1

Mark A. Israel
Senior Managing Director
Compass Lexecon

May 2016

1101 K Street NW, 8th Floor
Washington, DC 20005
(202) 589-3484 (direct)
misrael@compasslexecon.com

SUMMARY OF PROFESSIONAL EXPERIENCE

- Served as an expert for both the Federal Government and private parties in cases involving industries including fixed and mobile telecommunications, cable television, broadband internet service, other high technology industries, airlines, railroads, shipping, financial markets, credit cards, beverages, consumer retail, and many others.
- Testified in Federal Court and appeared in front of government agencies including DOJ, FTC, and FCC, and state agencies on behalf of numerous clients.
- Submitted expert reports in Federal Court, as well affidavits, declarations, and white papers to agencies including DOJ, FTC, FCC, DOT, and state agencies.
- Written numerous academic articles on topics including competition economics, merger policy, telecommunications, airlines, insurance markets, and labor markets. Research published in leading scholarly and applied journals including The American Economic Review, The Rand Journal of Economics, The Review of Industrial Organization, Antitrust Source, and the Global Competition Review, and presented to business, government, and academic audiences around the world.

AREAS OF EXPERTISE

- Antitrust and competition economics; industrial organization economics
- Applied econometrics
- Economic and econometric analysis of horizontal and vertical mergers
- Economic and econometric analysis of antitrust litigation topics, including: Class certification, damages, and liability issues in cases involving price fixing, exclusive dealing, monopolization, bundling, price discrimination, and exclusionary practices

EDUCATION

- Ph.D., Economics, STANFORD UNIVERSITY, June 2001.
- M.S., Economics, UNIVERSITY OF WISCONSIN-MADISON, August 1992.
- B.A., Economics, ILLINOIS WESLEYAN UNIVERSITY, Summa Cum Laude, May 1991.

EMPLOYMENT HISTORY

Compass Lexecon: *Senior Managing Director*, January 2016 – Present.

(Previously: *Executive Vice President*, April 2013-January 2016; *Senior Vice President*, January 2009 – March 2013; *Vice President*, January 2008 – December 2008; *Economist*, January 2006 – December 2007.)

Kellogg School of Management, Northwestern University: *Assistant Professor of Management and Strategy*, 2000 – 2006; *Associate Professor of Management and Strategy*, 2007 – 2008.

State Farm Insurance: *Research Administrator*, 1992 – 1995.

RECENT PROFESSIONAL RECOGNITIONS

American Antitrust Institute 2015 Antitrust Enforcement Awards, *Outstanding Antitrust Litigation Achievement in Economics* Finalist.

Global Competition Review Who's Who Legal: Competition 2016, leading Economist.

Global Arbitration Review's 2016 International Who's Who of Commercial Arbitration, leading Expert Witness.

LIVE TESTIMONIAL EXPERIENCE

Testimony in Commercial Arbitration on Issues Related to Mobile Wireless Competition; New York, NY; April 12, 2016

Testimony as Economic Expert on behalf of Regal Entertainment Group, In the Matter of iPic – Gold Class Entertainment, LLC, et al., v. Regal Entertainment Group, AMC Entertainment Holdings, Inc., et al., In the District Court of Harris County, Texas, 234th Judicial District, No. 2015-68745. Deposition: January 12, 2016. Live Trial Testimony: January 21, 2016.

Testimony as Economic Expert on behalf of Federal Trade Commission in Re: Federal Trade Commission et al. v. Sysco Corporation and USF Holding Corp., Civil Action No. 15-cv-00256 (APM). Deposition: April 28, 2015. Live Trial Testimony: May 7, May 8, May 14, 2015.

Appearances in Federal Communications Commission, Economists Panels:

- Comcast/Time Warner, January 2015
- AT&T/T-Mobile, July 2011
- Comcast/NBCUniversal, August 2010

Appearance before California Public Utility Commission, Public Hearings on Comcast/Time Warner Merger, Los Angeles, April 2015.

Appearance as Economic Testifying Expert in front of Department of Justice, Federal Trade Commission, Federal Communications Commission, and State Regulatory Agencies in many additional transactions, including: Danaher/NetScout, AT&T/Leap Wireless, T-Mobile/MetroPCS, American Airlines/US Airways, SpectrumCo/Cox/Verizon Wireless,

oneworld antitrust immunity application, PepsiCo/bottlers, Houghton Mifflin/Harcourt, Chicago Mercantile Exchange/Chicago Board of Trade.

EXPERT REPORTS, AFFIDAVITS, AND DECLARATIONS

Expert Report of Mark Israel, In the Matter of La Crosse County, individually, and on behalf of all others similarly situated, v. Trinity Industries, INC. and Trinity Highway Products, LLC, In the United States District Court, Western District of Wisconsin, No. 3:15-cv-00117-scl, May 27, 2016.

Second Supplemental Declaration of Mark Israel, Daniel Rubinfeld, and Glenn Woroch, “In the Matter of Special Access for Price Cap Local Exchange Carriers”, Federal Communications Commission, WC Docket No. 05-25, April 20, 2016.

Supplemental Declaration of Mark Israel, Daniel Rubinfeld, and Glenn Woroch, In the Matter of Special Access Rates for Price Cap Local Exchange Carriers, Federal Communications Commission, WC Docket No. 05-25, March 24, 2016.

Declaration of Mark Israel, Daniel Rubinfeld, and Glenn Woroch, In the Matter of Special Access Rates for Price Cap Local Exchange Carriers, Federal Communications Commission, WC Docket No. 05-25, February 19, 2016.

Declaration of Mark Israel, Daniel Rubinfeld, and Glenn Woroch, “Competitive Analysis of the FCC’s Special Access Data Collection” Federal Communications Commission, WC Docket No. 05-25, January 26, 2016.

Declaration of Dr. Mark Israel, In the Matter of iPic – Gold Class Entertainment, LLC, et al., v. Regal Entertainment Group, AMC Entertainment Holdings, Inc., et al., In the District Court of Harris County, Texas, 234th Judicial District, No. 2015-68745, January 18, 2016.

Declaration of Dennis Carlton, Mark Israel, Allan Shampine & Hal Sider, “Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans,” Federal Communications Commission, WC Docket 15-247, January 7, 2016.

Declaration of Mark A. Israel, Attached to “Response of AT&T Mobility LLC to Notice of Apparent Liability for Forfeiture,” Federal Communications Commission, File No. EB-IHD-14-00017504, July 17, 2015.

Reports in Re: Federal Trade Commission et al. v. Sysco Corporation and USF Holding Corp., Civil Action No. 15-cv-00256 (APM). Declaration: February 18, 2015. Report: April 14, 2015. Rebuttal Report: April 21, 2015.

Declaration of Mark A. Israel, Bryan G. M. Keating, and David Weiskopf, “Economic Analysis of the Effect of the Comcast-TWC Transaction on Voice and Broadband Services in California,” December 3, 2014.

Expert Report of Mark A. Israel, “Economic Analysis of the Effect of the Comcast-TWC Transaction on Broadband: Reply to Commenters,” Federal Communications Commission, MB Docket 14-57, September 22, 2014.

Supplemental Declaration of Mark Israel and Allan Shampine, In the Matter of Amendment of the Commission's Rules Related to Retransmission Consent, Appendix A to "Reply Comments of the National Association of Broadcasters," Federal Communications Commission, MB Docket 10-71, July 24, 2014.

Declaration of Mark Israel and Allan Shampine, In the Matter of Amendment of the Commission's Rules Related to Retransmission Consent, Appendix B to "Comments of the National Association of Broadcasters," Federal Communications Commission, MB Docket 10-71, June 26, 2014.

Expert Report of Mark A. Israel, "Implications of the Comcast/Time Warner Cable Transaction for Broadband Competition," Federal Communications Commission, MB Docket 14-57, April 8, 2014.

Declaration of Michael L. Katz, Philip A. Haile, Mark A. Israel, and Andres V. Lerner, "Sprint's Proposed Weighted Spectrum Screen Defies Economic Logic and Is Inconsistent with Established Facts," Federal Communications Commission, WT Docket 12-269, March 14, 2014.

Reply Declaration of Mark A. Israel, "Competitive Effects and Consumer Benefits from the Proposed Acquisition of Leap Wireless by AT&T: A Reply Declaration," Federal Communications Commission, WT Docket 13-193, October 23, 2013.

Declaration of Mark A. Israel, "An Economic Analysis of Competitive Effects and Consumer Benefits from the Proposed Acquisition of Leap Wireless by AT&T," Federal Communications Commission, WT Docket 13-193, August 1, 2013.

Supplemental Reply Declaration of Michael L. Katz, Philip A. Haile, Mark A. Israel, and Andres V. Lerner, "Comments on Appropriate Spectrum Aggregation Policy with Application to the Upcoming 600 MHz Auction," Federal Communications Commission, WT Docket 12-269, June 13, 2013.

Reply Declaration of Michael L. Katz, Philip A. Haile, Mark A. Israel, and Andres V. Lerner, "Comment on the Submission of the U.S. Department of Justice Regarding Auction Participation Restrictions," Federal Communications Commission, WT Docket 12-269, June 13, 2013.

Reply Declaration of Michael L. Katz, Philip A. Haile, Mark A. Israel, and Andres V. Lerner, "Spectrum Aggregation Policy, Spectrum-Holdings-Based Bidding Credits, and Unlicensed Spectrum," Federal Communications Commission, GN Docket 12-268, March 12, 2013.

Declaration of Igal Hendel and Mark A. Israel, "Econometric Principles That Should Guide the Commission's Analysis of Competition for Special Access Service," Federal Communications Commission, WC Docket 05-25, February 11, 2013.

Reply Declaration of Mark A. Israel and Michael L. Katz, "Economic Analysis of Public Policy Regarding Mobile Spectrum Holdings," Federal Communications Commission, WT Docket 12-269, January 7, 2013.

- Declaration of Mark A. Israel and Michael L. Katz, “Economic Analysis of Public Policy Regarding Mobile Spectrum Holdings,” Federal Communications Commission, WT Docket 12-269, November 28, 2012.
- Declaration of Mark Israel, “An Economic Assessment of the Prohibition on Exclusive Contracts for Satellite-Delivered, Cable-Affiliated Networks,” Federal Communications Commission, MB Docket Nos. 12-68, 07-18, & 05-192, September 6, 2012.
- Expert Report of Mark Israel, “Implications of the Verizon Wireless & SpectrumCo/Cox Commercial Agreements for Backhaul and Wi-Fi Services Competition,” Federal Communications Commission, WT Docket 12-4, August 1, 2012.
- Expert Report of Mark A. Israel, Michael L. Katz, and Allan L. Shampine, “Promoting Interoperability in the 700 MHz Commercial Spectrum,” Federal Communications Commission, WT Docket 12-69, July 16, 2012.
- Affidavits of Dr. Mark A. Israel in Re: Bloomberg L.P. V. Comcast Cable Communications, LLC, Federal Communications Commission, MB Docket 11-104, June 21, 2012 (Declaration), June 8, 2012 (Declaration), September 27, 2011 (Supplemental Declaration), July 27, 2011 (Declaration).
- Expert Report of Robert Willig, Mark Israel, Bryan Keating, and Jonathan Orszag, “Response to Supplementary Comments of Hubert Horan,” Docket DOT-OST-2009-1055, October 22, 2010.
- Expert Report of Robert Willig, Mark Israel, Bryan Keating, and Jonathan Orszag, “Measuring Consumer Benefits from Antitrust Immunity for Delta Air Lines and Virgin Blue Carriers,” Docket DOT-OST-2009-1055, October 13, 2010.
- Expert Report of Mark Israel and Michael L. Katz, “Economic Analysis of the Proposed Comcast-NBCU-GE Transaction,” Federal Communications Commission, MB Docket 10-56, July 20, 2010.
- Expert Report of Mark Israel and Michael L. Katz, “The Comcast/NBCU Transaction and Online Video Distribution,” Federal Communications Commission, MB Docket 10-56, May 4, 2010.
- Expert Report of Mark Israel and Michael L. Katz, “Application of the Commission Staff Model of Vertical Foreclosure to the Proposed Comcast-NBCU Transaction,” Federal Communications Commission, MB Docket 10-56, February 26, 2010.
- Expert Report of Robert Willig, Mark Israel, and Bryan Keating, “Competitive Effects of Airline Antitrust Immunity: Response of Robert Willig, Mark Israel, and Bryan Keating” in Docket DOT-OST-2008-0252, January 11, 2010.
- Affidavit of Dr. Mark A. Israel on Class Certification in Re: Puerto Rican Cabotage Antitrust Litigation, in the United States District Court for the District of Puerto Rico, MDL Docket No. 3:08-md-1960 (DRD), December 10, 2009.
- Expert Report of Robert Willig, Mark Israel, and Bryan Keating, “Competitive Effects of Airline Antitrust Immunity” in Docket DOT-OST-2008-0252, September 8, 2009.