

husband is killed by a cartel that he is not the man she thought he was. The *telenovela* follows Sara's journey from housewife to baroness of organized crime, and centers around a love story between Sara and a dashing male suitor and her struggles against powerful male figures, from drug lords to the president.¹⁷ A fourth *telenovela*, ***Tierra de Reyes*** ("Land of Kings"), took the M-F 9:00-10:00 timeslot and bumped ***Los Miserables*** to 8:00-9:00 in the third sample week. That show, like the other three, featured a vertical love story at its core with themes of violence, and centers around the attempts of two brothers to avenge the murder of their sister.¹⁸ It is a remake of the blockbuster show ***Pasión de Gavilanes*** ("Passion of Hawks"), broadcast on NBC Universo in the sample period.

34. In the second quarter of 2015, Telemundo again devoted its prime-time hours to *telenovelas* focused on themes of love, crime, and revenge.¹⁹ ***Avenida Brasil*** ("Brazil Avenue") (M-F 8:00-9:00) was a successful Brazilian *telenovela* with themes of love and revenge produced by the Brazilian powerhouse Globo.²⁰ Telemundo continued to broadcast ***Tierra de Reyes*** (M-F 9:00-10:00 and rebroadcasts), described above. ***Dueños del Paraíso*** ("Masters of Paradise") (M-F 10:00-11:00) is again a *narconovela*, this time about a woman who becomes queen of the drug traffic in Miami.²¹

¹⁷ <http://www.telemundo.com/novelas/senora-acero>.

¹⁸ <http://www.telemundo.com/novelas/tierra-de-reyes>.

¹⁹ In the third sample week, the network replaced *telenovelas* with the World Cup on one evening and a movie for part of a second evening.

²⁰ <http://www.telemundo.com/novelas/avenida-brasil>. See also Anderson Antunes, *Brazilian Telenovela 'Avenida Brasil' Makes Billions By Mirroring Its Viewers' Lives*, *Forbes* (Oct. 19, 2012), available at <http://www.forbes.com/sites/andersonantunes/2012/10/19/brazilian-telenovela-makes-billions-by-mirroring-its-viewers-lives/> (noting that the show features characters from the "new middle class").

²¹ <http://www.telemundo.com/novelas/duenos-del-paraiso>.

Another *narconovela*, *El Señor de los Cielos* (“The Lord of the Skies”) (M-F 10:00-11:00 and rebroadcasts), replaced *Dueños* from the second sample week.²²

35. One noteworthy characteristic of all of these *telenovelas* is that the action is set in, and features characters from, a range of geographies—Las Vegas, Houston, Mexico, Brazil, Miami—reflecting Telemundo’s identity as a multinational network and the diversity of Telemundo’s audience. Likewise, the *narconovela* often has significant Colombian influences. By developing and/or acquiring *telenovela* programming that is set in different geographic locations and/or reflects different Latino cultures, Telemundo is seeking to appeal to a broad audience with which these varied characteristics in the programming will resonate. I will return to this below.

2. EstrellaTV’s Prime-time Slate

36. EstrellaTV’s prime-time lineup is markedly different from Telemundo’s. In the sample weeks, EstrellaTV did not air a single *telenovela*. EstrellaTV’s public statements have made clear that it is pursuing an express strategy of counter-programming against the prime-time *telenovela* approach of Telemundo and Univision by showcasing a range of lighter, often unscripted programming, including variety shows, game and competition shows, and tabloid news and comedy shows.²³

37. I have reviewed statements of EstrellaTV management confirming this intentional and strategic effort to differentiate EstrellaTV from Telemundo. For example, at the 2009 launch of the network, EstrellaTV’s COO, Winter Horton, observed

²² <http://www.telemundo.com/novelas/el-senor-de-los-cielos>.

²³ Joe Flint, *Spanish Network Estrella Launches, But Will Its Star Shine or Fade?*, L.A. Times Blog (Sept. 14, 2009), available at <http://latimesblogs.latimes.com/entertainmentnewsbuzz/2009/09/spanish-network-estrella-launches-but-will-its-star-shine-or-fade.html>.

that the market was “oversaturated” with *telenovelas*,²⁴ and that EstrellaTV was going to “counter progra[m]” by offering “talk shows, . . . variety shows, music shows, drama, game shows.”²⁵

38. EstrellaTV’s founder, Lenard Liberman, similarly stated that it didn’t “make sense to fight against” *telenovelas*, and that the “way of winning” was to “offer[] alternative programming.”²⁶ In Liberman’s words, “Univision and secondarily Telemundo[] air *novelas* in primetime We don’t air any *novelas*. . . . We provide an alternative—musical variety and comedy, scripted drama, comedy sketch shows. *So it’s just different from a novela in every way.*”²⁷

39. At the time the network was first launched, an EstrellaTV presentation prepared for the 2009 upfronts confirmed the network’s strategy to “Counter Program Existing Hispanic Networks.”²⁸ EstrellaTV graphically depicted the strategy in this pie chart:

²⁴ Adam Benzine, *The Other America*, C21 Media (Nov. 19, 2012), available at <http://www.c21media.net/the-other-america/?print=1>.

²⁵ *New Network Star Set To Launch*, Radio and Television Business Report (Jan. 26, 2009), available at <http://rbr.com/new-network-star-set-to-launch/> (quoting Estrella’s COO, Walter Horton).

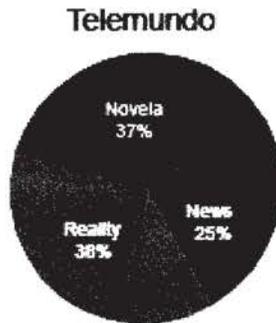
²⁶ Laura Martinez, *Q&A: Liberman Media’s Lenard Liberman*, Multichannel News (Feb. 18, 2009), available at <http://www.lbimedia.com/Media/PressReleases/20090218.pdf> (last accessed May 17, 2016).

²⁷ *Executive Session with Lenard Liberman: Now’s The Time For Next Hispanic Network*, TV News Check (Mar. 17, 2009), available at <http://www.tvnewscheck.com/article/30437/nows-the-time-for-next-hispanic-network> (emphasis added).

²⁸ Ex. 3 (*Estrella TV: It’s All About The Stars*, LBI Media Upfront Deck 8 (2009), available at <http://www.lbimedia.com/pdf/UpfrontDeck2009.pdf> (last accessed June 1, 2016)).



EstrellaTV drove home the contrast with established Spanish language networks, including Telemundo²⁹:



40. EstrellaTV carried forward this differentiated programming strategy into the 2014–15 time period that I examined. In the fall of 2014, EstrellaTV made a written presentation to Comcast { [REDACTED]

[REDACTED] } That presentation reflected that

{ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] }

²⁹ EstrellaTV prepared similar charts for Spanish-language networks, Univision and Telefutera, each of which showed heavy slates of telenovelas (41% and 37%, respectively). *Id.*

In that presentation, EstrellaTV confirmed for Comcast that {

[REDACTED]³⁰}

41. My review of EstrellaTV’s programming during the sample weeks confirms that the network has consistently and expressly executed this strategy of counter-programming against the *telenovelas* broadcast by Telemundo.

42. From 8:00 p.m. to 9:00 p.m. in the sample weeks, EstrellaTV aired a program called *Tengo Talento Mucho Talento* (“I Have Talent, Lots of Talent”), similar to the English-language *America’s Got Talent*. Many of the judges are recognizable stars of Mexican border music, and one judge is a character shown frequently on EstrellaTV, Don Cheto, who is played by the actor as a stereotypical rural Mexican farmer or “ranchero.”

43. From 9:00 p.m. to 10:00 p.m., EstrellaTV aired a comedy show called *Noches con Platanito* (“Nights with Little Banana”), which is a “variety show in the style of a talk show but hosted by a ‘Mexican clown for adults’” in wig and makeup.³¹ Visually, the show looks like an English-language hybrid-format late night show with celebrity interviews and light games. The show features highly sexualized humor and innuendo.

³⁰ Nissenblatt Ex. 2 (presentation delivered by LBI to Comcast on October 14, 2014) at exhibit pp. 2, 4.

³¹ See, e.g., *U.S. Hispanic: Estrella TV Anota Éxito con Noches Con Platanito*, Prensario Internacional (Sept. 11, 2014), available at <http://www.prensario.net/10363-US-Hispanic-Estrella-TV-anota-exito-con-emNoches-con-Platanitoem.note.aspx>; Victor M. Tolosa, *Televisoras de Habla Hispana en EU*, Excelsior (Aug. 20, 2014), available at <http://www.excelsior.com.mx/opinion/victor-m-tolosa/2014/08/20/977118> (noting that “the program is mostly vulgar, rely[ing] strongly on dance and interviewing guests using double entendre.”).

44. From 10:00 p.m. to 10:30 p.m., EstrellaTV aired a tabloid news show called *Alarma TV*. And from 10:30 p.m. to 11:00 p.m., Estrella aired a more formal news show called *Noticiero con Enrique Gratas*.

3. Prime-time Cushions on Telemundo and Estrella: 6:00 p.m. to 8:00 p.m. and 11:00 p.m. to 1:00 a.m.

45. I find other dissimilarities in programming when I look outside of the core prime-time hours.

46. From 6:00 p.m. to 8:00 p.m., Telemundo broadcast a half-hour scripted drama series, *Decisiones* (centering on problem-solving storylines), or a half-hour video show, *Videos Asombrosos*, often filled with videos of car chases and other action footage; its half-hour nightly newscast, *Noticiero Telemundo*; and an hour-long show called *Caso Cerrado* (“Case Closed”), which could be considered a Hispanic version of *Judge Judy*, and is hosted by a Cuban exile raised in Puerto Rico known for bringing in a range of experts, like social workers, and giving advice about how to overcome difficult problems, often related to family or immigration. (Note that Telemundo airs three hour-long blocks of *Caso Cerrado* each weekday.) In stark contrast, EstrellaTV does not air news or scripted, video-based, or “court” shows; rather, it aired *Retofamosos*, which is a late-night-style game show featuring a range of personalities, many of whom are known from their work on the Mexican broadcast network Televisa, and *Rica Famosa Latina*, which is a *Real Housewives*-style show tracking the inner lives of wealthy Latin American or Latina women.

47. From 11:00 p.m. to 1:00 a.m., Telemundo presented *Al Rojo Vivo*, a news magazine; *Titulares y Más*, a high-production-value late night talk show, visually akin to *The Late Show With David Letterman* or *The Tonight Show*, with major celebrities

and sports stars as guests; and an hour of rebroadcast *telenovelas* (Telemundo also airs rebroadcast *telenovelas* from 1:00 a.m. to 2:00 a.m.). By contrast, EstrellaTV does not air news, talk, or *telenovelas*. Instead, from 11:00 p.m. to 11:30 p.m., EstrellaTV broadcasted *Que Jalada* (“What a Fail!” or “What a Snort!”), which is a blooper reel show like *America’s Funniest Home Videos*.³² From 11:30 p.m. to 12:00 a.m., EstrellaTV aired *Secretos*, which is a show in which people—often jilted lovers—solicit the help of television “detectives” to plant hidden cameras and catch their cheating spouses, or similar.³³ For the remaining hour, EstrellaTV put on paid programming.

48. In sum, as demonstrated above, the programming slates on EstrellaTV and Telemundo vary significantly. During primetime, Telemundo laser-focuses on *telenovela* programming appealing to a broad, multi-cultural Spanish-speaking audience. EstrellaTV intentionally produces and airs non-*telenovela* programming that provides lighter and less-sophisticated entertainment to the Mexican-based audience that is its base. Both networks’ programming outside of primetime also is quite distinct in genre and type, and only confirms that the networks’ overall mix of target programming and content is not similar.

4. NBC Universo’s Prime-time and Prime-time Cushion Slates

49. NBC Universo is a different network altogether. It is heavily focused on sports, and airs large blocks of wrestling (every Friday and Saturday); sports news shows, pre-game shows, and other sports-oriented shows (nightly and on weekends); NASCAR; and major international soccer events (Premier League and the

³² <http://quejalada.estrellatv.com/>.

³³ See, e.g., *IMDB: Secretos*, available at <http://www.imdb.com/title/tt0449550/> (last accessed May 17, 2016).

men's and women's World Cup series). It highlights celebrity reality shows that follow the everyday lives of celebrities, such as *Larrymania* and *A Toda Gloria*. It also shows fast-paced action-oriented scripted series that would appeal to a younger (18-34) audience.

50. During the period described above for Telemundo and EstrellaTV—the hours between 6:00 p.m. and 1:00 a.m.—NBC Universo (and its predecessor Mun2) typically aired a mix of the following programming: (1) soccer or sports commentary shows; (2) scripted dramas, such as *Decisiones*, and the dubbed English-language science fiction show *Terminator: The Sarah Connor Chronicles*; (3) two action-filled police reality shows, *Operación Repo* and *Fugitivos de la Ley* (“Fugitives from the Law”), which is like *Cops*, but with dark, militaristic themes, like special forces raids and drug- and organ-trafficking; (4) a handful of *telenovelas* like *Pasión de Gavilanes* (“Passion of the Hawks”) and *Infiltrados*, a Colombian *narconovela*;³⁴ and (5) two hour-long, high-production-value shows following the lives of superstars of Latin music, one female and one male. The first, *A Toda Gloria*, promises total access to the family and work life of pop superstar Gloria Trevi,³⁵ and the second features the singer Larry Hernández and his multigenerational family.³⁶ The programming is entirely distinct from that aired on EstrellaTV.

51. In sum, I was able to discern strong qualitative differences between the target programming and content on EstrellaTV and NBC Universo.

³⁴ These *telenovelas* were shown on Mun2; in the sample weeks I reviewed after the re-branding, NBC Universo no longer showed *telenovelas*.

³⁵ <http://www.nbcuniverso.com/shows/a-toda-gloria>.

³⁶ <http://www.nbcuniverso.com/now/larrymania>.

D. EstrellaTV’s Programming Shows That It Is Targeting A Distinctly Regional, Mexican Audience

52. EstrellaTV’s programming, marketing materials, and public statements make quite clear that it is presenting a heavily Mexican-themed network designed to target the overwhelmingly Mexican-American community in the western region of the United States. This is in sharp contrast to Telemundo and NBC Universo, both of which demonstrate through their programming and marketing that they aim to and do appeal to a broader and more varied mix of Spanish-language viewers.

1. EstrellaTV Showcases Mexican Talent and Language

53. EstrellaTV’s programming showcases primarily Mexican talent. Most of its stars became famous on the Mexican broadcast network Televisa,³⁷ and I am familiar with almost all of them. I have also reviewed a slide deck prepared by EstrellaTV that highlighted twenty-five actors who would appear on the network; all but two are Mexican.³⁸

54. In its 2009 launch, EstrellaTV promised shows featuring “a collection of Mexico’s most famous comedic actors”³⁹ and a variety show hosted by “top Mexican actresses.”⁴⁰ The head of the network stated that EstrellaTV’s programming

³⁷ See, e.g., Victor M. Tolosa, *Televisoras de Habla Hispana En EU*, Excelsior (Aug. 20, 2014), available at <http://www.excelsior.com.mx/opinion/victor-m-tolosa/2014/08/20/977118> (noting that most stars on Estrella are “Mexican artists who had jobs in Mexico on Televisa and found refuge in this chain [Estrella].”).

³⁸ Ex. 3 (*Estrella TV: It’s All About The Stars*, LBI Media Upfront Deck 11-13 (2009), available at <http://www.lbimedia.com/pdf/UpfrontDeck2009.pdf>). I consulted web biographies of the actors to confirm their national origin.

³⁹ See, e.g., *Chuperamigos*, available at <http://www.amazon.com/Chuperamigos-Season-Spanish-Language-Subtitles/dp/B01730BRLK> (show page billing “Los Chuperamigos” as “un conjunto de actores cómicos más famosos de México.”) See also *Jenni Rivera en Chuperamigos*, available at <https://www.youtube.com/watch?v=jW1mi3Z9QyU> (same text).

⁴⁰ Ex. 3 (*Estrella TV: It’s All About The Stars*, LBI Media Upfront Deck 17 (2009), available at <http://www.lbimedia.com/pdf/UpfrontDeck2009.pdf>).

would “resonate[] with [its audience] easily, using famous actors from Mexico.”⁴¹ My review of the programming shows that, in the 2014-15 time period I examined, EstrellaTV made good on its promise.

55. The network has also adopted a distinctly Mexican sound, in that it features Mexican accents and slang throughout its programming. To that end, the actress Lianna Grethel, who is one of the rare non-Mexican talents appearing on EstrellaTV, publicly stated that she was initially not hired by Estrella because “[t]he owner of the channel and other people were saying that my accent was too Colombian, too prominent, and that it needed to be more neutral, Mexican, and in my last audition, which was more or less with more of a Mexican accent, they selected me.”⁴²

2. EstrellaTV’s Shows Have Mexican Themes and Mexican-American Regional Appeal

56. EstrellaTV targets and develops programming that is designed to appeal to Mexican-American audiences. When EstrellaTV launched, press reports noted that the network was “targeting primarily Mexican-Americans.”⁴³ This was echoed in comments of Lenard Liberman, head of LBI, who explained that EstrellaTV was “branding [EstrellaTV with] big name actors, theatrical stars, and the best comedians from Mexico. People know these stars and follow them on our network *when they cross the border.*”⁴⁴

⁴¹ *New Network Star Set To Launch*, Radio and Television Business Report (Jan. 26, 2009), available at <http://rbr.com/new-network-star-set-to-launch/> (quoting Estrella’s COO, Walter Horton).

⁴² Myriam Silva-Warren, *Una ‘Caleña’ en Estrella TV*, CENTRO Tampa (May 14, 2013), available at <http://www.centrotampa.com/news/noticias/2011/may/05/una-cale-en-estrella-tv-ar-337692/>. “Caleña” means “a woman from Cali, in Colombia.”

⁴³ Katy Bachman, *Updated: Estrella TV Signs Four Affiliates*, Adweek (Feb. 4, 2009), available at <http://www.adweek.com/news/television/updated-estrella-tv-signs-four-affiliates-111289>.

⁴⁴ *Jose Liberman’s Dream: Make Big Money Quietly With Spanish TV*, Video Age Int’l (Jan. 2010), <http://www.videoageinternational.com/articles/2010/01/liberman.html>.

57. For example, two of EstrellaTV's core comedy and variety acts feature classic and recognizable figures from Mexican comedy, heavy rotations of Mexican music, and comedic content targeted at Mexicans. The first, *Lagrimita y Costel*, is hosted by a pair of Mexican circus clowns whose humor has roots in a Mexican popular-theater comedic genre known as *sainete cómico*, and features, among others, a character derived from Mexico's Charlie Chaplin, *Cantinflas*, people dressed in *charro* (Guadalajara cowboy-musician) outfits, and various kinds of Mexican *banda* (folk) music. The second, *El Show de Don Cheto*, is a variety show hosted by a comic dressed as an old farmer or *ranchero* who speaks in a "rural Michoacán language style," referring to the state in Mexico.⁴⁵ Don Cheto appears in costume across the network, including as a judge on EstrellaTV's *America's Got Talent*-style talent competition and in music videos using Mexican slang to parody Donald Trump's plans to build a wall on the Mexican border.⁴⁶

58. The network also hosts "the only award show spotlighting Mexican music,"⁴⁷ and at times has aired programs like *Milagros* ("Miracles"), a show boasting "the support of over 75 Catholic churches throughout Mexico."⁴⁸ And to the

⁴⁵ See, e.g., *Don Cheto Bio & Story: The Man Behind the Character*, LBI (Apr. 18, 2013), at 2, available at <http://elshowdedoncheto.com/assets/elshowdedoncheto/files/Don-Cheto-Biography-4-18-13.pdf> (describing the Don Cheto character as "a 65-year-old character with a great deal of life experience in both Mexico on the United States" who uses a "rural Michoacán language style.")

⁴⁶ *Id.*; *Vel El Nuevo Video Musical de Don Cheto y Luis Coronel "Bad Blood Parodia"*, Que Buena (Nov. 11, 2015), available at <http://aquisuena.estrellatv.com/lo-ultimo/ve-el-nuevo-video-musical-de-don-cheto-y-luis-coronel-bad-blood-parodia/>.

⁴⁷ Estrella TV Sizzle Reel (2016) at minute 2:07, available at <https://www.youtube.com/watch?v=LPT5BMfyK2g> (last accessed May 16, 2016).

⁴⁸ Ex. 4 (*Milagros*, EstrellaTV Catalog (2012), available at <http://lbimedia.com/pdf/EstrellaCURRENTcatalog.pdf>) at exhibit p. 10.

extent that EstrellaTV began to show a small percentage of sports programming, it was Mexican league soccer matches.⁴⁹

E. Telemundo’s and NBC Universo’s Programming Demonstrates That They Target a National, Multiethnic Audience

1. Telemundo and NBC Universo Feature Diverse Talent

59. In stark contrast to EstrellaTV’s roster of almost exclusively Mexican talent, Telemundo features talent of a range of Spanish-speaking geographies, reflecting the network’s roots in Miami, South and Central America, and the Caribbean. For example, the network’s *Caso Cerrado*, the *Judge Judy* analogue described above, is hosted by a Cuban exile raised in Puerto Rico who speaks in a Cuban accent. Its news magazine, *Al Rojo Vivo*, is hosted by a Puerto Rican. *Decisiones* features actors of different nationalities, varied geographic locations, and production styles from multiple countries. And its *telenovelas*, which occupy every single hour of Telemundo’s prime-time programming, take place in, and feature characters from, a range of geographies. In the sample period, Telemundo aired *telenovelas* based in Miami, Las Vegas, Houston, Brazil, and Mexico, and Mun2 aired *telenovelas* filmed in Colombia, Brazil, and Manhattan. The networks’ characters speak in a range of accents—and in Telemundo’s own productions, often speak in a neutral, flat accent—appealing to the networks’ diverse target and actual audiences. NBC Universo similarly draws its talent from multiple ethnic and cultural backgrounds, including Latin-American talent on *Operación Repo*.

⁴⁹ See, e.g., Nissenblatt Ex. 2 (presentation delivered by LBI to Comcast on October 14, 2014) at exhibit p. 14.

2. Telemundo’s and NBC Universo’s Shows Target a Diverse Audience

60. Both Telemundo and NBC Universo target programming designed to appeal to viewers from a range of backgrounds. In primetime, for instance, Telemundo broadcasts *telenovelas* from across Latin America—from the Brazilian producer Globo and the Colombian producer Caracol, among others—and in so doing, amplifies the genre’s already-wide appeal. NBC Universo prime-time programming targets younger Latino audiences across ethnic and cultural divides. Moreover, and in contrast to EstrellaTV, both Telemundo and NBC Universo air major national and international sporting events like World Cup and Premiere League soccer, both wildly popular amongst Latino audiences of all backgrounds; NASCAR races and WWE wrestling matches; and the Olympics.⁵⁰

61. As noted above, Spanish-language audiences are attuned to and appreciate these geographic and cultural differences in talent, genre, and theme, and Telemundo and NBC Universo know that targeting and airing programming with diverse characteristics can drive viewership among varied segments of the Spanish-language community. EstrellaTV takes a different strategic approach. It infuses its programming with the Mexican talent, themes, and program formats that it knows will be familiar and thus appealing to the more targeted Mexican-oriented, western regional audience that it targets.

⁵⁰ See, e.g., <http://www.nbcuniversal.com/business/NBCUniverso> (describing the network as offering sports programming “including FIFA World Cup™, NASCAR Mexico Series, NFL, Premier League and the 2016 Olympic Summer Games in Rio.”).

F. EstrellaTV’s Programming Content Is Distinct From Telemundo’s and NBC Universo’s In Tone, Theme, Look, and Feel

62. The distinctions between EstrellaTV and Telemundo and NBC Universo extend well beyond differences in target programming and content and target audiences. EstrellaTV offers a style of content—across programming and dayparts—that is starkly different from that aired on the other two networks. EstrellaTV’s programming is often less sophisticated, more crass, and more highly sexualized, visually and linguistically, in ways that Telemundo’s and NBC Universo’s are not.

63. For example, although both EstrellaTV and Telemundo air news magazines, stark differences in tone and point of view illustrate the differences between the networks.

64. EstrellaTV’s *Alarma*, hosted by a man and a young woman in a tight dress, features purely tabloid stories: women who are sexually assaulted by predators they met over the Internet; a mafia-style execution in Turkey; a buxom, scantily-clad woman being given a shower of champagne and rose petals to save her from being unsuccessful in love, apparently as a kind of *Santeria* or *magia blanca* (“white magic”) ritual; and a story about a town that devised its own form of violent punishment for local prostitutes. *Alarma*’s set is built to look like a game show, and the voiceovers use a kind of urgent or outraged or excited tone to narrate the videos. The language of the show is in its imagery: *Alarma*’s stories involve sex, superstition, and crime, and use the quasi-news format to show nudity and violence on screen.

65. Telemundo’s *Al Rojo Vivo* is a news magazine show, hosted by a conservatively-dressed woman, that features a different type of human interest story: a clip about a train driver that saves a passenger from death; another about a group of

young women who marched through the streets to call attention to cat-calling; a clip on the resignation of Dilma Rouseff; a clip about the hippopotamus used to film a *telenovela* getting loose and roaming the streets of a Colombian neighborhood; and a clip about a good Samaritan who saved a man whose car was on fire. The language and the content of the show is relatively informal, but more conservative.

66. Much of EstrellaTV’s other content is light entertainment, and this is mirrored in the network’s “look and feel”: sketch comedy, circus games, clowns, festive music, sets in bright colors,⁵¹ often with ribald overtones.⁵² By contrast, significant blocks of programming on both Telemundo and NBC Universo are dark and dramatic. Both networks air programming across day parts with themes of drug trafficking, crime, the law, conspiracy, and violent revenge. The networks’ sizzle reels—and even the dark lighting and tone of the shows themselves—use action sequences, bold fonts, and pulsing music to amplify the networks’ themes.⁵³ Even NBC Universo’s celebrity reality shows have dark undertones: the star of *Larrymania* is associated with *narcocorrido* music, a form of “vivid ballads that chronicle the drug trade with bravado,”⁵⁴ and the star of *A Toda Gloria* spent time in prison in Brazil.⁵⁵ EstrellaTV

⁵¹ For example, see Estrella’s show websites for *Lagrimita y Costel* (the clown variety show) and *Tengo Talento Mucho Talento* (the talent competition), available at <http://lagrimitaycostel.estrellatv.com/> and <http://tengotalento.estrellatv.com/>. I have included an exhibit illustrating differences across the networks as Ex. 5.

⁵² EstrellaTV’s comedic slate is built around sexualized humor. The network’s *Noches con Platanito* (“Nights with Little Banana”) features interviews with celebrities using double entendres. The clown show *Lagrimita y Costel* features pranks and games with sexualized themes. EstrellaTV’s blooper show, *Qué Jalada*, has a mix of general pranks (a fire truck on fire) and sexual humor (a man whose crotch is on fire, a man teasing a policeman with a dildo).

⁵³ The Telemundo Sizzle Reels I consulted amplify these differences. Telemundo’s *telenovelas* often use dark lighting and heavy vignetting to amplify their themes; on this score, they are visually distinguishable from Univision’s, which tend to be bright and airy.

⁵⁴ ‘*Larrymania*’ Reality Star Is Now In Real Trouble—In Small-Town South Carolina, L.A. Times (Oct. 18, 2015), available at <http://www.latimes.com/local/california/la-me-larrymania-20151019-story.html>.

therefore has a very different tonal and thematic presentation than either Telemundo or NBC Universo, reflective of its effort to attract a different type of audience.

V. CONCLUSION

67. Based on my prior experience in the area of Spanish-language television and my analysis of all of the factors addressed above, in my opinion, EstrellaTV is not “similarly situated” to Telemundo or NBC Universo in target programming or content, target audience, or look and feel. The networks are distinct across key metrics, which is reflected in the actual programming aired, EstrellaTV’s marketing materials and public statements acknowledging both its counter-programming strategy and discrete focus on the Mexican or Mexican-American community, and stark contrasts in the tone and theme of the networks.

⁵⁵ Justino Aguila, *From Sex Cults to Prison Time, Inside the True-Life Telenovela of Gloria Trevi*, *Billboard* (Oct. 3, 2014), available at <http://www.billboard.com/articles/news/6273995/gloria-trevi-interview-on-reality-show-a-toda-gloria-prison>.

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

Dated: New York, New York
June 3, 2016



Professor Tomás A. López-Pumarejo

EXHIBIT 1

May 2016

Tomás A. López-Pumarejo, Ph.D, Ph.D

e-mail: samot25@mac.com

home address: 114 West 76 Street, Apt 2F, New York, NY 10023

Cellular Telephone: 718-551-1414

Education

University of Minnesota: Ph.D. in Hispanic and Luso-Brazilian Studies/ Mass Communication

University of Valencia, Spain: Doctorate Philology/ Film and Television

Cornell University: M. A. in Hispanic Literature/ Sociology

University of Puerto Rico: M. A. in Journalism/ Public Communication

Professional Experience

— Consulting

10/2011-present *Expert witness-Intellectual Property:* I produced a report and delivered a deposition on an NBC and telenovelas Federal case. RE: Feldman Gale (Miami). http://www.dailyreportingsuite.com/ip/news/telemundo_failed_to_show_that_tv_series_wasn_t_substantially_similar_to_venezuelan_telenovela (Retrieved April 24, 2016).

1/99-12/00 *Marketing Consultant* in the area of Latin American and US Hispanic business for: *Dewars/Bacardi* (Miami), *Dish Satellite* (Denver), *General Motors* (Detroit), *Lowes* (South Carolina), *Corporation for the Integral Development of Ecotourism* (San Juan, Puerto Rico), *LopezNegrete* (Houston) and *Creative Realities* (Boston).

9/99-7/00 *Strategic Marketing Consultant in the area of Latin American and US Hispanic Business, The Vidal Partnership, New York City*

—Academic Experience

1/01-present—Professor of Strategic Management and Global Business, Department of Business Management, Murray Koppelman School of Business, Brooklyn College, *City University of New York*

2011-present—Consortial Faculty for the Business Program and Governing Board Member, School of Professional Studies, *City University of New York*

- 1995-2000 Assistant Professor of Media Studies *City University of New York* at Queens College and The College of Staten Island
- 1993-94 Research Fellow, Center for Twentieth Century Studies, *University of Wisconsin, Milwaukee*. Project: *Counterculture Marketing*
- 1990-93 Assistant Professor of Media Studies Communication Department, *University of Wisconsin, Parkside*

Languages: Fluency in Spanish and Portuguese. Proficiency in French and Italian

Editorial Boards

Reviewer: *Business Society and Government Journal* of the Business, Society and Government Consortium, a Division of the Midwest Business Administration Association (MBAA) International.

Reviewer: *Society for Case Research*, a Division of the Midwest Business Administration Association (MBAA) International

Editorial Board: *Guionactualidad*, On-line Journal of the Autonomous University of Barcelona Masters Program in Film and Television Scriptwriting.

Memberships in Professional Organizations

Association for Environmental Studies and Sciences

Eastern Academy of Management

U.S. Coordinator for the *Ibero-American Television Observatory Project* (PROFITEL) Autonomous University of Barcelona (UAB), Spain

(2006-9) U.S. Coordinator for the *Ibero-American Television Observatory* (OBITEL) Autonomous University of Barcelona (UAB), Spain and University of Sao Paulo, Brazil.

Northeast Decision Science Institute (NEDSI)

Society for Case Research, a Division of the Midwest Business Administration Association (MBAA) International

Business Society and Government Consortium, a Division of the Midwest Business Administration Association (MBAA) International.

The Center for the Study of Latino Media and Markets, School of Journalism and Mass Communication, Texas State University, San Marcos.

Publications

Books:

Aproximación a la telenovela (Madrid: Cátedra, 1987)- This was the first academic book published on the *telenovela* industry. Cátedra (a prestigious Spanish literature publisher) distributed the book globally and converted it into a classic.

Refereed publications and book chapters:

(2016) Refereed Proceedings: “Electric Car-Sharing: Is it Possible in New York City?” 29th *World Electric Vehicle Symposium and Exhibition (EVS29)* The Palais des congrès de Montréal, Montréal, Québec, Canada: np

(2015) Chapter Nine “The Role of Media in Preserving Spanish in the U.S.,” in: Alonso, José A., et. alt. Eds. *The Future of Spanish in the United States: The Language of Hispanic Migrant Communities* (Madrid: Ariel/Fundación Telefónica, 2014): 325-345. [English translation from original in Spanish (Madrid: Ariel, 2014)]

(2014) Chapter Nine “El rol de los medios de comunicación en la preservación del idioma español en los Estados Unidos” in: *El futuro del español en los Estados Unidos: La lengua de los inmigrantes hispanos* (Madrid: Ariel/Fundación Telefónica, 2014): 337-358.

(2013) “U.S. Television: How it Adapts to Change,” in: Lorenzo Vilches, Ed., *Convergence and Trans-media* (Barcelona: Gedisa, 2013): 307-317. Original in Spanish: “Las televisiones de EE.UU: Cómo se adaptan al cambio,” en: Lorenzo Vilches, Ed., *Convergencia y transmedialidad* (Barcelona: Gedisa, 2013): 307-317.

(2012) “The Webnovela and Immigrants in the United States,” *The American Journal of Business: Special Issue on Immigration*, 27 (1), Spring 2012: 40-57.

(2011) “Urban Consumers on Two Wheels: Metropolitan Bike-Sharing Schemes and Outdoor Advertising in Paris, Montreal, New York and San Juan,” *Transfers: Interdisciplinary Journal of Mobility Studies*, I (3), Winter 2011: 92-112.

(2011) with Nora Mazziotti, “*Stealing from a Thief: Marketing to Hispanics*,” in: Graciana Vázquez Villanueva and Laura Siri (Eds.) *Casos concretos: Comunicación y cultura en el siglo XXI* (Buenos Aires: La Crujía): 43-56. [Reprinted from original published in *Alambre* (2009)]

(2011) “Exploring Green Business Models: The Bicycle Rental Programs of Paris, Montreal, New York and San Juan, Puerto Rico.” (R) *Selected Proceedings of the Business, Society and Government Consortium, 2001 Midwest Business Management Association International Conference*: pp/TBA.

(2010) “Television and New Media: U.S. WebNovelas,” *Guionactualidad*: Online Journal of the University of Barcelona's Masters Scriptwriting Program, <http://guionactualidad.uach.cl/spip.php/article4228>. Oct. 5.

(2010) “Shopping and the U.S. Hispanic's Cultural Citizenship (on Irene Sosa's documentary Shopping to Belong).” *Guionactualidad*: Online Journal of the University of Barcelona's Masters Scriptwriting Program, <http://guionactualidad.uach.cl/spip.php/article4154>. Aug. 3.

(2010) with Nora Mazziotti in: Eliseo Colón and Mónica Rector (Eds.) Issue: *Gusto Latino*, “Stealing from a Thief: Marketing to Hispanics,” (R) [Original in Spanish: *Gusto latino: "Ladrón que roba a ladrón, el Marketing de lo Hispano,"*] *A Special Issue of the Journal of the Latin American Federation of Semiotics, DeSignis* 14, 1: 123-132. [Reprinted from original published in *Alambre* (2009)]

(2009) López-Pumarejo, Tomás and Myles Bassell. "The Renaissance of Outdoor Advertising: A Global Transformational Phenomenon From Harlem to Hong Kong." (R) *American Journal of Business* 24.2, Fall: 33-39.

(2009) “Exploring the Canadian and U.S. Markets for the Electric Car.” (R) *Selected Proceedings of the Business, Society and Government Consortium, 2009 Midwest Business Management Association International Conference*: 82-89.

(2009) with Agueda Sanfiz in: Lorenzo Vilches, Ed. *Mercados Globales: Historias Nacionales* [In English: *Global Markets and National Stories*, Chapter: “The United States” (R)] (Barcelona: Gedisa): 123-142.

(2009) with Nora Mazziotti, “Ladrón que roba a ladrón y el marketing de lo hispano,” [In English: “Stealing from a Thief: Hispanic Marketing” (R)], *Alambre*, No. 2 March. <http://www.revistaalambre.com/> (authorized reprint for media economy on-line journal)

(2008) with Myles Bassell, “How Technology Transforms Outdoor Advertising: Succeeding in the Global Environment,” (R) *Selected Proceedings of the Business, Society and Government Consortium, 2008 Midwest Business Management Association International Conference*: 65-83.

(2008) with Agueda Sanfiz in: Maria Immacolata Vasallo de Lopes and Lorenzo Vilches, Eds. *Culturas e mercados da ficção televisiva em países ibero-americanos: Anuario OBITEL 2007* [In English: *Cultures and Markets of Fiction in Ibero-American Countries: 2007 OBITEL Yearbook*] Chapter: “A televisão em espanhol se fortalece, a televisão em inglês se debilita.” [In English: “United States: Spanish-Language Television Grows Stronger as Television in English Weakens.”] (Rio de Janeiro: Globo Universidade): 211-233. [OBITEL Portuguese translation from original in Spanish (Gedisa: Barcelona 2009)]

(2008) with Agueda Sanfiz in: Maria Immacolata Vasallo de Lopes and Lorenzo Vilches, Eds. *Global Markets, Local Stories* Chapter: “United States: TV in Spanish Becomes Stronger, TV in English Weakens.” (Rio de Janeiro: Globo Universidade): 294-315. [OBITEL English translation from original in Spanish (Gedisa: Barcelona 2009)]

(2007) with Agueda Sanfiz in: Lorenzo Vilches and Maria Immacolata Vasallo de Lopes (Coordinators) *Culturas y mercados de la ficción televisiva en Iberoamérica: Anuario OBITEL 2006* [Cultures and Markets of Television Fiction in Ibero-America: 2006

OBITEL Yearbook] (Barcelona: Gedisa, 2007) *chapter*: “Estados Unidos: La expansión de la ficción hispana,” [In English: “The United States: the Expansion of Hispanic Fiction,”]: 195-221.

(2007) “Telenovelas and the Israeli Television Market.” (R) *Television and New Media*, Vol. 8 (3) August: 197-212.

(2007) “The Impact on the Upper Manhattan Empowerment Zone (UMEZ) on Retail at Harlem,” (R) *Midwest Business Administration Association International, 2007 Business, Society and Government Consortium Selected Proceedings*: 63-75.

(2007) With Hershey Friedman and Linda Weiser Friedman, “A New Kind of Marketing: Creating Micro-Niches Using Resonance Marketing” (R) *Journal of Internet Commerce* Vol 6 (1):83-99.

(2007) with Hershey H. Friedman and Linda Weiser Friedman. "Frontiers in Multicultural Marketing: The Disabilities Market," (R) *Journal of International Marketing and Marketing Research*, Vol. 31 (1), February, 25-39.

(2006) “The Influence of the Developing World’s Television Practices on U.S. Health Education Efforts: Entertainment Education and the Center for Disease Control,” (R) *Journal of International Marketing and Marketing Research*, Vol. 31: 3, October, 111-128.

(2006) with Hershey H. Friedman and Linda Weiser Friedman. “The Largest Minority Group: The Disabled.”(R) *Business Quest*, October.

<http://www.westga.edu/~bquest/2006/disability.pdf>

(2006)Yeidy Rivero. *Tuning out Blackness: Race and Nation in the History of Puerto Rican Television* “REV” (Bloomington: Indiana University Press), *CENTRO: Journal of the Center for Puerto Rican Studies*, 18: 2, Fall, 8-10.

(2006) “Ingrid Otero-Smart” (Entrepreneur Biography), Virginia Sanchez-Korrol (Ed.). *Latinas In the United States: A Historical Encyclopedia* (Bloomington: Indiana University Press).

(2006) “Telenovela Storms: Global Formulas,” *Revista de Alvaro Cueva* [Television, Film, Show Business Industries] Buenos Aires/ Mexico No. 3 April, 51.

(2006) “Telenovelas and Latinas” Virginia Sanchez-Korrol (Ed.). *Latinas In the United States: A Historical Encyclopedia* (Bloomington: Indiana University Press).

(2005) “On Marketing and Nationalism: The Puerto Rico Art Museum,” (R) *2005 Northeast Decision Science Institute Conference*, Pennsylvania: NEDSI/Drexel University, April 1. (disk format)

(2004) “Telenovelas: A Global Product,” in: Pablo Helguera (Ed.) *Telenovela Institute: Los del Este/Eastenders* (London: Royal College of Art, October), 6-7.

(2001) “Media Personalities,” *Encyclopedia of Contemporary Latin American and*

Caribbean Cultures. (London: Routledge), 946.

(2001) “Teaching Resources on the US Hispanic Consumer: The Intricacies of a \$390 Billion Market,” (R) *The 6th Annual Marketing Management Association Fall Educators’ Conference*, Saint Louis, Missouri, September, 74-5.

(2001) “Media Enterprises,” *Encyclopedia of Contemporary Latin American and Caribbean Cultures*. (London: Routledge), 945.

(2000) “Case Study: Old San Juan, Puerto Rico” in: Paul Knox and Peter Ozolins (Eds) *Design Professionals and the Built Environment: An Introduction*, (London: John Wiley), 127-129.

(1999) “The Educational Nature of Serial Drama: *Telenovelas* and Soaps” (R) *Archivos de la Filmoteca*, 31 (February), 8-31.

(1998) “Colonia antigua y democracia moderna: Puerto Rico entre dos noventa y ochos,” in: Kevin Power, (Ed.) *’98 Cien años después* (R), Valencia: Consellería de Cultura), pp. 93-109, in English: “Ancient Colony and Modern Democracy: Puerto Rico Between Two Ninety-Eights,” 263-272. A book chapter.

(1997) “Radionovela,” ” in: Joaquín Alvarez Barrientos (Ed) *Diccionario de literatura popular española* (Salamanca: Ediciones Colegio de España), 277-278.

(1997) “Telenovela” in: Joaquín Alvarez Barrientos (Ed) *Diccionario de literatura popular española* (Salamanca: Ediciones Colegio de España), 310-132.

(1996) “Cultural Politics and Historic Preservation: Old San Juan.”(R)*Traditional Dwellings and Settlements Review*, Vol. 86 (Fall), 19-34.

(1995) “On *Telenovelas* and the Presidency of Fernando Collor de Mello.” (R) *The Destiny of Narrative at the End of the Millennium*. Ed. Vicente Sánchez-Biosca/ Rafael R. Tranche. Valencia: Archivos de la Filmoteca, (October) 184-197 and 345-353 (original in English).

(1995) *Warrior for Gringostroika*” (REV) *Discourse* 18:1 Fall, 194-198.

(1995) Richard Maxwell, “Media and the Transition to Democracy: The Case of Spain.” (Translation) [“Medios de Comunicación y Transición Política; El Caso de España”] (R) *Dialogos de la Comunicación*, No. 42, June, 32-44.

Media and Invited Presentations

(2016) “Electric Cars, Fossil Fuel and the Global Economy” *Foreign Affairs Discussion Group*, Jewish Community Center of New York, June 3.

(2015) Quoted: *The New Yorker*, “The Man Who Wouldn’t sit Down: How Univision’s

Jorge Ramos Earns His Viewers' Trust," October 5, Page 19.

(2014) "*The future of Spanish in the United States: A Round Table.*" Launching at the Instituto Cervantes, New York, of the English version of the (Telefónica Foundation Series on the Economic Value of Spanish) book with the same title for which López-Pumarejo wrote the closing Chapter (on the role of media in the preservation of Spanish in the U.S.) and participated in the round table as an author, December 10.

http://nyork.cervantes.es/FichasCultura/Ficha96983_27_2.htm

(2013) "Congratulations Tomas Lopez-Pumarejo... Best Conceptual Paper Award" *CUNY School of Professional Studies*, April 15.

<https://plus.google.com/117951358564617509474/posts/iPof9atUh2d>

(2013) Alexandra Gatereaux, "Narconovelas, Prove a Golden Telenovela Formula for Latino TV Networks," *Fox News Latino*, April

8.<http://latino.foxnews.com/latino/entertainment/2013/04/08/narco-novelas-prove-golden-telenovela-formula-for-latino-tv-networks/>

(2012) "Social Media Marketing," Seminar for: The Flatbush Business Connection and The Brooklyn College School of Business, City University of New York, May 9.

(2012) "Impact of Mexican Television in the Soviet Union," Department of Foreign Languages and Literatures, The City College, City University of New York, May 8.

(2012) "Marketing and New Media: The U.S.'s Webnovelas," ("Nuevos medios y mercadotecnia: las webnovelas,") Communication Sciences Division of the Department of Language Theory, University of Valencia, Spain, April 27.

(2012) "Internet, Culture and Organizational Performance in the United States," a Graduate Seminar at the Television and Film Masters Scriptwriting Program, Department of Journalism and Communication Sciences, Autonomous University of Barcelona, Spain, April 17-20.

(2012) "Tomás López-Pumarejo Scores Prestigious Visiting Professorship in Barcelona," *BCNews*, March 12.

http://www.brooklyn.cuny.edu/web/news/bcnews/bcnews_120315.php

(2011) Symposium Organizer: *Genre Theory and the New Media: Predicting Cultural Change*, 2011 Brooklyn College Faculty Day, May 25.

(2011) *NBC News Channel Four (New York)* Interviewed by Lynda Baquero on the success of NBC-Telemundo global Spanish-language series, March 15.

(2011) Panel Chair: *Matters of Education, 2011 Midwest Business Administration Association (MBAA) International Conference*, Division: Business, Society and Government, Chicago, March 25.