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

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	)	
In the Matter of	)	
	)	MB Docket No. 07-42
Leased Commercial Access	)	
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	)	

COMMENTS OF SHOP NBC

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Summary

There is no basis in law or policy for the Commission's decision to exclude home shopping networks from its revised lease access rate methodology. As the Commission has previously recognized, home shopping programmers provide the public with unique benefits. Not surprisingly, home shopping channels are highly valued by cable viewers. Simply put, the Commission's exclusion of home shopping programmers from its modified leased access rate formula is unjustified, unconstitutional, outside of the Commission's statutory authority, and bad public policy.

The Commission's discriminatory treatment of home shopping networks cannot stand up to scrutiny under the First Amendment. The distinction the Commission proposes to make permanent is entirely based on programmers' content. As a content-based regulation, the Commission's treatment of home shopping networks must satisfy strict scrutiny, but it is neither narrowly tailored nor serves a compelling governmental interest. Even if it could somehow be argued that the exclusion of home shopping networks, while still a speech regulation, is content-neutral — a dubious assumption — the regulation cannot be sustained under the applicable intermediate scrutiny standard, either. The Commission's unequal treatment of home shopping networks also does not fall within the scope of the commercial speech doctrine; even if it did, it would not meet the standards for regulation of commercial speech. And, as discussed below, the exclusion of shopping networks is both over- and under-inclusive, itself fatal to the constitutionality of speech regulation. We join Commissioner McDowell sentiment on this issue in his dissent from the *FNPRM*: "I cannot fathom how distinguishing programmers based on the content they deliver can be constitutional."

The Commission disparate treatment of home-shopping networks is also unlawful because the Commission lacks the requisite statutory authority to specify different rates for home shopping programmers so as to avoid migration. Neither the 1984 Cable Act nor the 1992 Cable Act provides the Commission with the authority to weigh the prevention of migration as a factor in establishing its rules for leased access. Moreover, the Commission's actions go against well-established precedents that require the Commission to avoid constitutional issues when interpreting a statute and to limit content-based regulations to ones specifically contemplated by Congress.

In addition to its statutory and Constitutional failings, the Commission's decision to bar home shopping programmers from the revised leased access rate methodology should be rejected as bad policy. Despite clear evidence that home-shopping programmers provide services that benefit the public, and further evidence that the public itself values and enjoys this programming, the Commission implemented a policy that will limit the opportunity of home shopping programmers to gain and/or maintain access to new cable platforms. Further, the policy of excluding *all* home shopping channels from the revised leased access rates to avoid the possibility of migration is over-inclusive because it makes no allowance for those channels that are not on a given cable system at all. And paradoxically, the Commission is acting to *diminish* and not promote the diversity of voices on cable by not allowing smaller, more specialized home-shopping channels to rely on the modified leased access rates.

Finally, Shop NBC concludes that there is no evidence to support the Commission's decision to exclude home-shopping programmers from the new rates. The Commission's assumption that widespread migration is inevitable if shopping networks are permitted to use the new leased access rates is not justified. The theoretical potential for migration is small to begin

with: the total number of shopping channels which would be in a position to switch to lease access channels is very small, and the benefits available from negotiated carriage agreements make the number of possible migrators and the likelihood of migration even smaller. Moreover, the record in this proceeding lacks any evidence that migration has either been a major issue since leased access became an option for cable programmers or that migration by home shopping networks would have a materially adverse impact on cable operators' finances.

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ValueVision Media, Inc., d/b/a Shop NBC ("Shop NBC"),[1/] respectfully submits these comments in response to the Commission's Further Notice of Proposed Rulemaking in the above-captioned proceeding, released February 1, 2008.[2/]

Introduction

These comments are being filed in response to the *FNPRM* released in conjunction with the Report and Order that modified the Commission's leased access rules for cable operators. In particular, the Commission altered the formula used to establish leased access rates for full-time carriage so as to "promote the goals of competition and diversity of programming sources while

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[1/] Shop NBC was initially incorporated under the name of ValueVision International, Inc. It participated extensively in the Commission's earlier leased access rulemaking proceedings (MM Docket No. 92-266) under that name. *See ValueVision Int'l, Inc. v. FCC*, 149 F.3d 1204 (D.C. Cir. 1998). The corporation changed its name to ValueVision Media, Inc. in 2002. It has been using the Shop NBC brand name since 2001, pursuant to an exclusive licensing agreement with NBC Universal entered into in November 2000.

[2/] Report and Order and Further Notice of Proposed Rulemaking, *Leased Commercial Access*, MB Docket No. 07-42, FCC 07-208 (rel. Feb. 1, 2008) ("*FNPRM*").

doing so in a manner consistent with growth and development of cable systems."[3/] In adopting revised rates, the Commission excluded from the new methodology "programmers that predominantly transmit sales presentations or program length commercials,"[4/] an exception that includes Shop NBC. The Commission's stated reason for this distinction was a concern that the lower rates from the modified formula will cause home shopping and infomercial programmers to migrate to leased access channels, a result that the Commission claimed would be harmful because "it would not add to diversity of voices and would potentially financially harm the cable system."[5/] The Commission, tacitly acknowledging that it lacked any evidentiary record on the potential for "migration," asked for further comments on the subject and on whether the exclusion of shopping format networks should be made permanent.

There is no basis in law or policy for the Commission's treatment of shopping format networks as less valuable or diverse. Home shopping networks provide unique benefits to the public and add to the diversity of programming and programming sources, which was — as the Commission has accepted — Congress' objective in mandating leased access. In fact, the Commission itself has recognized that "home shopping stations provide an important service to viewers who either have difficulty obtaining or do not otherwise wish to purchase goods in a more traditional manner,"[6/] and therefore channels that "are predominantly utilized for the

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[3/] *Id*. ¶ 38.

[4/] *Id*. ¶ 37.

[5/] *Id*.

[6/] Report and Order, *Implementation of Section 4(g) of the Cable Television Consumer Protection and Competition Act of 1992: Home Shopping Station Issues*, 8 FCC Rcd 5321 ¶ 28 (1993) ("*Home Shopping Must Carry R&O*").

transmission of sales presentations . . . serve the public interest."[7] In addition to assisting consumers with special needs, home shopping programming provides valuable competition to brick-and-mortar and Internet shopping websites and allow consumers to find products at lower prices. Moreover, home shopping programming offers its viewers the ability to become educated about the myriad products in the marketplace without leaving their home.

Home shopping channels are valued by viewers. For example, home shopping television networks earned an estimated *ten billion dollars* in sales revenue in the United States in 2007.[8] Further, a study done by the Electronic Retailers Association found that 10% of consumers in the United States purchased merchandise from a home shopping network in 2006.[9] This is due to the consumer benefits afforded by home shopping programming as discussed above and further discussed in the testimonials of Shop NBC viewers attached hereto,[10] and also because of the programming's overall entertainment value. There are many Shop NBC viewers who tune into Shop NBC with little or no intention of buying anything; instead, they watch simply because they are attracted to the programming and the program hosts. As one Shop NBC viewer has commented, "I watch for entertainment as much as for purchase."[11]

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[7] *Id*. ¶ 43.

[8] Statement of Robert Manning at ¶ 3 ("Manning Statement") (attached hereto as Exhibit A).

[9] Industry Research, Facts & Figures, Electronic Retailing Association, http://www.retailing.org/new_site/memresources/research/facts_figures.htm#drivensales (last visited March 31, 2008).

[10] *See* Exhibit B. This is a collection of testimonials from Shop NBC viewers obtained by means of a BizRate Research survey that appears after a customer has completed purchasing an item. This survey prompts customers to provide general comments if they so desire. The name and email address for each customer have been omitted.

[11] *See id.* at B - 5.

While the Commission treats all home shopping channels alike, they are not homogeneous. Aside from HSN and QVC, which sell a large variety of products to a broad range of consumers, there are many different smaller home shopping networks that sell specialized goods and/or who target their products to specific audiences. Shop NBC is itself a more specialized home shopping channel that has distinguished itself from HSN and QVC by selling goods at a substantially higher price point — including jewelry, watches, and beauty products. In fact, in the last 20 years — the time in which HSN and QVC have become household names — most new home shopping channels appear to cater to a specialized audience or offer specialized products.[12/]

The Commission's exclusion of home shopping programmers from its modified leased access rate formula must come to an end because it is unjustified, unconstitutional, not within the Commission's statutory authority, and represents bad public policy.

I. The Commission's Discriminatory Treatment of Home Shopping Content Violates the First Amendment.

The government may only discriminate between types of cable programming on the basis of its content if its regulations are *narrowly tailored* to serve a *compelling* government interest.[13/] It could not be more clear that the Commission's new leased access rules discriminate on the basis of content: The *FNPRM* singles out one class of cable content — "sales presentations [and] program length commercials" — and assigns to that class alone a far less favorable leased access rate methodology.[14/] Nor is there any argument that the new leased access rules are

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[12/] Manning Statement ¶ 4.

[13/] *United States v. Playboy Entm't Group, Inc.*, 529 U.S. 803, 813 (2000) (citing *Sable Communications of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989).

[14/] *FNPRM* ¶ 37.

narrowly tailored to serve a compelling interest: The Commission does not and could not assert that its asserted goal of avoiding "migration" of cable content from negotiated deals to leased access, even if such speculative migration would actually occur, is a compelling governmental interest. Moreover, the home shopping exclusion is both over- and under-inclusive in its service of that goal, as there are obvious alternatives that would more effectively avoid potential migration and without the same intrusion into the First Amendment rights of programmers. In fact, the Commission could not support the continued discriminatory treatment of home shopping content under any level of First Amendment scrutiny. As Commissioner McDowell succinctly put it in his dissent from the home shopping carve-out, "I cannot fathom how distinguishing programmers based on the content they deliver can be constitutional."[15/]

A. The Commission's Adoption of Higher Leased Access Rates for Home Shopping Programming Is Content-Based Discrimination Subject to Strict Scrutiny.

"There can be no disagreement on an initial premise: Cable programmers . . . engage in and transmit speech, and they are entitled to the protection of the speech and press provisions of the First Amendment."[16/] While a less traditional medium for speech, "[c]able television partakes of some of the aspects of speech and the communication of ideas as do the traditional enterprises of newspaper and book publishers, public speakers, and pamphleteers."[17/] On this basis, the courts have regularly applied heightened First Amendment scrutiny to statutes and

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[15/] *FNPRM*, Statement of Commissioner Robert M. McDowell at 84.

[16/] *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 636 (1994) ("*Turner I*") (citing *Leathers v. Medlock*, 499 U.S. 439, 444 (1991)).

[17/] *City of Los Angeles v. Preferred Commc'ns, Inc.*, 476 U.S. 488, 494 (1986).

regulations limiting the activities or opportunities of cable programmers.[18/] Nor is there any debate regarding the level of scrutiny to apply to content-based regulation of cable programming.[19/] A regulation discriminating between types of cable television content is subject to strict scrutiny, and can only be upheld if it is narrowly tailored to further a compelling state interest.[20/]

Here, as in *Playboy*, "[t]he speech in question is defined by its content."[21/] The *FNPRM* does not establish facially neutral regulations that affect home shopping content disproportionately; it openly singles out "programmers that predominately transmit sales presentations or program length commercials" and imposes a significantly higher rate for such programmers seeking to obtain leased access.[22/] Moreover, "[i]t is of no moment that the [regulation] does not impose a complete prohibition" on delivery of home shopping content,[23/]

[18/] *See, e.g.*, *Playboy*, 529 U.S. at 813 (regulation of sexually-oriented cable programming warrants strict scrutiny); *Turner I*, 512 U.S. at 637 (cable must-carry rules implicate First Amendment); *Leathers*, 499 U.S. at 444 (same for sales tax singling out cable service); *Time Warner Entm't Co., L.P. v. FCC*, 93 F.3d 957 (D.C. Cir. 1996) ("*Time Warner II*") (same for cable rate regulation, including leased access).

[19/] The Commission's reliance on the D.C. Circuit's 1996 *Time Warner* decision to justify the constitutionality of the new leased access rules generally is inapplicable to the discriminatory treatment of home shopping content. *See FNPRM* ¶ 72 (citing *Time Warner II*, 93 F.3d at 969). The court's decision to apply intermediate scrutiny was premised on the fact that, under the Commission rules then under review, programmers' "qualification to lease time on those channels depends not on the content of their speech, but on their lack of affiliation with the operator . . . ." *Time Warner II*, 93 F.3d at 969. With respect to home shopping, the Commission is now plainly using programming content as a qualification; thus strict, rather than intermediate, scrutiny applies.

[20/] *Playboy*, 529 U.S. at 813.

[21/] *Id.* at 811.

[22/] *Id.* at 812 (applying strict scrutiny to regulation because it "single[s] out particular programming content for regulation").

[23/] *Id.*

because where "regulations . . . suppress, disadvantage, or *impose differential burdens* upon speech because of its content," court must still "apply the most exacting scrutiny."[24/] The higher leased access rate is undeniably a significant burden on home shopping programmers, whom (as discussed below) have been unable to either obtain leased access at current rates or negotiate carriage with operators in many markets. Denial of the new rate methodology would thus burden home shopping programmers' delivery of their speech in much of the country. As the Supreme Court cautions, "[t]he distinction between laws burdening and laws banning speech is but a matter of degree. The Government's content-based burdens must satisfy the same rigorous scrutiny as its content-based bans."[25/]

It is also of no constitutional significance that the Commission has singled out home shopping programming rather than, say, sports or religious programming; as the Commission has recognized, home shopping content is as entitled to the same First Amendment protection as any other commercial or non-commercial programming.[26/] This is true for two distinct reasons: First, speech is no longer automatically accorded lesser status merely because it is spoken in a commercial context. As the Supreme Court noted in *City of Cincinnati v. Discovery Network*, such a blanket rule would "place too much importance on the distinction between commercial

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[24/] *Turner I*, 512 U.S. at 642 (emphasis added); *see also Minneapolis Star & Tribune Co. v. Minn. Comm'r of Revenue*, 460 U.S. 575, 582 (1983) (tax on newspaper materials imposes unconstitutional burden on free speech).

[25/] *Id.*

[26/] *See Home Shopping Must Carry R&O*, 8 FCC Rcd 5321, 5330 ¶ 43 n.122 (1993) (doubting that "the Commission has the constitutional authority to restrict the operation or carriage of home shopping broadcast stations") (citing *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 424 (1993)).

and noncommercial speech."[27] In fact, a *majority* of the justices of the current Supreme Court has pointedly attacked the commercial/non-commercial distinction as unsustainable.[28]

Second, the Commission does not suggest — nor could it — that other programming to which the new leased access rates *do* apply is more valuable or important. As discussed above, viewers often watch home shopping programming or infomercials because they enjoy the content, without any intent to purchase the featured items. Many of these programs are tightly scripted, with enormous creative input.[29] In fact, when Congress instructed the Commission to consider the public interest served by broadcast stations airing home shopping content, the Commission had little difficulty concluding that "home shopping stations are serving the public interest."[30] This is hardly "speech which does 'no more than propose a commercial transaction.'"[31] What's more, sales presentations and commercials are aspects of virtually every broadcast and cable channel — most of which is transmitted with the goal of increasing viewership of interspersed commercials.

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[27] 507 U.S. at 424. As we discuss below, even if the Commission were to follow the standards traditionally applied to purely "commercial" speech, the exclusion of home shopping programming here would fail constitutional muster.

[28] *E.g.*, *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 575 (2001) (Thomas, J., concurring) ("I doubt whether it is even possible to draw a coherent distinction between commercial and noncommercial speech."); *Greater New Orleans Broad. Ass'n v. United States*, 527 U.S. 173, 197 (1999) (Thomas, J., concurring); *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 501-04 (1996) (joint opinion of Stevens, Kennedy, and Ginsburg, JJ.); *id.* at 517 (Scalia, J. concurring).

[29] Manning Statement at ¶ 10.

[30] *Home Shopping Must Carry R&O* ¶ 23. *See also id.* ¶ 6 (home shopping's "continued success and expansion would not likely occur without significant viewer support"); *id.* ¶ 27 ("the record clearly demonstrates that market forces have revealed a desire among a significant number of television viewers for home shopping programming.").

[31] *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 762 (1976) (quoting *Pittsburgh Press Co. v. Human Relations Comm'n*, 413 U.S. 376, 385 (1973)).

B. Rate Discrimination Between Home Shopping and Other Programming Fails Strict Scrutiny.

Strict scrutiny is a demanding test, under which "the law is presumptively invalid."[32/] To overcome this presumption, the Commission must establish that its discriminatory treatment of home shopping content is supported by compelling state interests, and that the rule is narrowly tailored to restrict as little speech as possible while serving the asserted interests.[33/] The Commission can meet neither prong of this test.

To justify its exclusion of home shopping content, the Commission offers only its speculative "concern" that home shopping programmers would "migrate" to leased access from their current negotiated carriage agreements with operators.[34/] There is absolutely no support for such a theory, either in the Communications Act or elsewhere. As discussed more fully below, neither the 1984 Cable Act nor its 1992 amendments include "migration" as a legitimate interest to be weighed in promulgating the rules for leased access, and we can find no mention of migration in the legislative history of those Acts.[35/] Aside from the barest mention of the subject in its 1997 *Leased Access Order* in reference to "a la carte" programmers, the Commission had not discussed the issue either — until now.[36/] Moreover, those with existing negotiated carriage

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[32/] *Time Warner Entm't Co., L.P. v. FCC*, 56 F.3d 151, 182 (D.C. Cir. 1995) ("*Time Warner I*") (citing *Simon & Schuster, Inc. v. Members of the New York State Crime Victims Bd.*, 502 U.S. 105, 115-16 (1991) and *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992)).

[33/] *Playboy*, 529 U.S. at 813.

[34/] *FNPRM* ¶ 37.

[35/] *See* section II, *infra*.

[36/] Second Report and Order, *Leased Commercial Access*, 12 FCC Rcd 5267 ¶ 50 (1997) ("If an unaffiliated a la carte programmer is implicitly paying more than the maximum leased access rate for carriage, the a la carte programmer could obtain a larger share of the subscriber revenue simply by demanding a lease."); *see also id*. ¶¶ 49, 123, 136.

agreements may choose to stay in those arrangements rather than migrate to leased access. These agreements offer significant benefits over leased access not reflected in the per-subscriber cost, such as improved channel positioning, inclusion in cable programming guides, or access to consumer billing services.[37/] The Commission has not come close to demonstrating that "migration" is anything but a "conjectural" harm.[38/]

The Commission argues that preventing migration of existing channels to leased access supports its interests in encouraging diversity of sources of programming and avoiding financial harm to cable operators. As an initial matter, it is unclear how preventing migration of home shopping channels supports these interests. Shop NBC is not aware of any evidence that would support a conclusion that the networks obtaining leased access in the stead of home shopping will be from new or diverse sources not currently represented on a given operator's system. As discussed below in section IV, Shop NBC knows of only a few cable systems with more than three channels of primarily home shopping content carried under negotiated carriage agreements. Even if all of these channels migrated to leased access (an unlikely event), a large cable operator would still have twelve channels available to lease, in addition to the non-leased channels freed up by the migrating programmers. And in a universe where a cable operator can provide 500 channels, it is difficult to see how consumers are being deprived of diverse sources of television content by the handful of home shopping networks currently operating. Similarly, the Commission has offered absolutely no evidence that migration — if it occurs — would "financially harm" the cable system. The small number of home shopping programmers

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[37/] Manning Statement ¶ 7.

[38/] *Turner I*, 512 U.S. at 664.

(compared to the enormous number of other programmers) seems to indicate that any financial impact of home shopping migration would be minimal.

In addition, there is little argument that diversity of sources of programming or preservation of the financial health of cable operators can be considered compelling interests justifying a content-based intrusion into the speech rights of home shopping programmers. No court has held either interest to be compelling. While courts have found the government's interest in "promoting the widespread dissemination of information from a multiplicity of sources" to be an important one,[39/] the context has always been one of intermediate First Amendment scrutiny. It certainly cannot be elevated to the level of those deemed compelling, such as "to ensure the basic human rights of members of groups that have historically been subjected to discrimination,"[40/] or "ensuring that criminals do not profit from their crimes."[41/] Similarly, even if the Commission can point to some support for the importance of cable operators' financial health in the establishment of a leased access rate, that interest cannot plausibly be considered sufficient to support a content-based distinction.

Even if the governmental interests the Commission points to were "compelling" for purposes of the First Amendment, the sweeping exclusion of all home shopping programming from the leased access rules is not narrowly tailored to achieve either of them. Indeed, the rules are both under- and over-inclusive.[42/] First, by applying only to home shopping programmers,

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[39/] *Id.* at 662-63.

[40/] *R.A.V.*, 505 U.S. at 395.

[41/] *Simon & Schuster, Inc. v. Members of the N.Y. State Crime Victims Bd.*, 502 U.S. 105, 119 (1991).

[42/] *See City of Ladue v. Gilleo*, 512 U.S. 43, 51 (1994) ("[T]he notion that a regulation of speech may be impermissibly *underinclusive* is firmly grounded in basic First Amendment

the exclusion is under-inclusive. If the problem is indeed "migration" of channels currently operating under negotiated agreements, then the exclusion should apply to any programmer with a negotiated arrangement with a cable provider. There are many other channels that might migrate from negotiated deals to leased access under the Commission's theory, such as new channels that pay "launch fees" to operators to get instant, nationwide access to viewers, even if they eventually plan move to a traditional license fee relationship.[43/] If leased access becomes cheaper than the launch fees they otherwise pay, these channels too could "migrate" to leased access with the same effect on diversity and financial well-being of the cable industry. Second, the exclusion is also over-inclusive. In many cases, home shopping providers have been unable to obtain leased access at current rates or negotiate access directly with a cable provider, and thus cannot "migrate" at all.[44/] The Commission's exclusion thus denies the benefits of the new rules to an entire class of programmers whether or not they have any ability to "migrate" from an negotiated agreement to a leased access slot.

To show that a regulation is narrowly tailored, the government must also prove that there are no less-restrictive alternatives to the discriminatory rule. "If a less restrictive alternative would serve the Government's purpose, the legislature must use that alternative."[45/] The

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principles.") (emphasis in original); *Ward v. Rock against Racism*, 491 U.S. 781, 799 (1989) ("Government may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals.")

[43/] *See, e.g.*, Ronald Grover & Lorraine Woellert, *Murdoch: Ready for a Rematch?*, BusinessWeek, Sept. 9, 2002, at 90 ("It cost News Corp. $300 million in fees to cable operators to launch Murdoch's Fox News Channel in 1996, and Murdoch is still paying cable operators to be seen."); John Dempsey et al., *Murdoch may make news net headlines with Malone*, Variety, May 27, 1996, at 6 (noting $10 per subscriber launch fees paid by Fox News).

[44/] Manning Statement at ¶ 5.

[45/] *Playboy*, 529 U.S. at 813.

Commission has ignored obvious alternatives, any of which would more closely fit the claimed interest in avoiding migration. For example:

- As discussed above, the Commission could preclude any network currently with a negotiated carriage agreement with a cable system from migrating to leased access on that cable system — at least during the term of the carriage agreement.
- The Commission could also use a waiver procedure for operators permitting individual relief for operators facing "migration."
- The Commission could have issued its *FNPRM* before putting its rates into effect or applied the new rate methodology to *all* programmers pending the outcome of the *FNPRM* and evidence of migration that might emerge.

Shop NBC does not endorse any of these alternatives as a policy matter — indeed, they may fail constitutional muster in their own right — but they are all more closely tailored to the Commission's interest than the discriminatory rule on which it settled.

The exclusion of shopping networks from the Commission's revised leased access rates is, therefore, a content-based distinction subject to the most exacting First Amendment scrutiny. The two speculative bases suggested by the Commission do not rest on compelling governmental interests; indeed the Commission's rule does not even advance those interests. Further, the exclusion of shopping networks is not narrowly tailored. Thus, the Commission's proposal to make permanent the discrimination against shopping networks would fail First Amendment review.

C. Even Under Intermediate Scrutiny, the Discriminatory Treatment of Home Shopping Content Cannot Be Sustained.

Even if strict scrutiny were not applied to the Commission's treatment of shopping networks, there is no doubt that heightened First Amendment scrutiny would apply. It is not possible to view the discriminatory treatment of these networks as anything other than content-based; however, if it were possible to concoct an argument that the exclusion of home shopping

content was content-neutral, it would nevertheless implicate the speech rights of affected programmers and thus requires heightened scrutiny.[46/] There is no support for application of a rational basis standard in this case.[47/] As the Supreme Court held in *Turner I*, any regulation that "impose[s] special obligations upon cable operators and special burdens upon cable programmers [demands] some measure of heightened First Amendment scrutiny."[48/]

The Commission has not made even the most desultory attempt to shoehorn its discriminatory rule into a content-neutral slipper, but even content-neutral regulation of cable programming can be sustained only if "it furthers an important or substantial governmental interest . . . and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest."[49/] "Narrow tailoring in this context requires . . . that the means chosen do not 'burden substantially more speech than is necessary to further the government's legitimate interests.'"[50/]

The Commission's treatment of home shopping programmers cannot satisfy this test any more than it can satisfy strict scrutiny. As discussed above, the Commission has done nothing more than conjecture that "migration" might occur if home shopping programmers can seek the new leased access rates. "When the Government defends a regulation on speech as a means to

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46/ *See Minneapolis Star & Tribune*, 460 U.S. at 583.

47/ *See Turner I*, 512 U.S. at 637 ("[T]he rationale for applying a less rigorous standard of First Amendment scrutiny to broadcast regulation, whatever its validity in the cases elaborating it, does not apply in the context of cable regulation."); *Playboy*, 529 U.S. at 813-15 (scarcity of spectrum and right-of-way justification for rational basis review of broadcast regulation not applicable to cable programmers).

48/ 512 U.S. at 641. *See also Time Warner II*, 93 F.3d at 968-971 (applying intermediate scrutiny to content-neutral aspects of leased access regime).

49/ *United States v. O'Brien*, 391 U.S. 367, 377 (1968).

50/ *Turner I*, 512 U.S. at 662 (quoting *Ward*, 491 U.S. at 799).

. . . prevent anticipated harms, it must do more than simply 'posit the existence of the disease sought to be cured.' It must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way."[51/] While the Commission suggested that excluding home shopping networks is needed to protect cable systems from financial harm, the cable industry did not provide any evidence — and the Commission cited to none that its staff developed — showing that the possible migration of a few home shopping networks to less expensive leased access carriage would result in financial harm to cable operators. In addition, the exception is both under- and over-inclusive, and there exist several less-restrictive alternatives (discussed above) that more closely support the Commission's stated aims.

D. The Commission Could Not Justify Its Treatment of Home Shopping Content Under the Commercial Speech Doctrine.

Even if the Commission or cable operators could argue that the distinct treatment of shopping networks should be evaluated under the commercial speech doctrine, that would not allow the Commission to continue its disparate treatment of shopping networks.[52/] Whatever the continued legitimacy of the "commercial speech" doctrine, it cannot sustain the Commission's actions here. As an initial matter, "For over 25 years, the [Supreme] Court has recognized that commercial speech does not fall outside the purview of the First Amendment."[53/] To be sustained, regulation of commercial speech must directly advance substantial government

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[51/] *Id.* at 664 (quoting *Quincy Cable TV, Inc. v. FCC*, 768 F.2d 1434, 1455 (D.C. Cir. 1985)).

[52/] As discussed above, the commercial speech rubric is not applicable to the Commission's exclusion of shopping networks from the new leased access rates.

[53/] *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 553 (2001).

interests and cover only the speech necessary to serve those interests.[54] The Supreme Court has routinely struck down laws and regulations based on this test, including FDA prohibitions on advertising "compounded" drugs,[55] regulations prohibiting outdoor advertising of tobacco products,[56] FCC rules prohibiting radio and television broadcasters from carrying advertising about privately operated commercial casino gambling,[57] and laws banning the advertisement of retail liquor prices.[58]

For the same reasons discussed above, the Commission cannot satisfy this test. Assuming its stated interests would qualify as substantial, the discriminatory treatment of home shopping programmers is again both overbroad and under-inclusive: The regulation covers far more speech than necessary to serve the putative interest in avoiding migration or the subsidiary goals of encouraging diversity in sources of programming and supporting the financial health of cable operators. Moreover, the Commission has simply guessed that discriminating against home shopping content will prevent migration — it lacks any basis for its conclusion that home shopping channels will migrate *en masse* to leased access.

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[54] *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557, 566 (1980). Unlawful or misleading speech may be regulated without regard to the First Amendment, but there is no contention here that home shopping content concerns unlawful activity or is misleading. *See id.*

[55] *Thompson v. W. States Med. Ctr.*, 535 U.S. 357 (2002).

[56] *Lorillard Tobacco*, 533 U.S. 525.

[57] *Greater New Orleans*, 527 U.S. 173.

[58] *44 Liquormart*, 517 U.S. 484.

II. The Commission Has No Statutory Authority to Mandate Different Rates for Home Shopping Stations So As to Avoid the Possibility of Migration

The statutory framework for leased access was established in the Cable Communications Policy Act of 1984 ("the 1984 Cable Act").[59/] This statute required cable systems to set aside a portion of their channel capacity for leased access. Congress then broadened the scope of the Commission's statutory authority to promulgate rules for the leased access program in the Cable Television Consumer Protection and Competition Act of 1992 ("the 1992 Cable Act").[60/] Congress directed the Commission to add to the diversity of information sources provided to cable subscribers while also promoting competition in the delivery of diverse sources of video programming.[61/] In establishing the Commission's authority to set rules for leased access, Congress required that the Commission determine maximum rates that cable systems could charge, establish reasonable terms and conditions along with dispute resolution procedures, but also made clear that the resulting rules must not adversely affect the operation, financial condition, or market development of the cable system.[62/] Noticeably absent from this grant of rulemaking authority is a command to weigh the prevention of migration as a factor in establishing rates for leased access.

[59/] Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (*codified at* 47 U.S.C. § 521, *et seq.*) (1984).

[60/] Cable TV Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

[61/] *See* Communications Act of 1934 § 612 (c)(1) (*codified at* 47 U.S.C. § 532 (a)) (1992).

[62/] Communications Act of 1934 § 612(c)(1) and (c)(4)(A)(i), (ii), (iii) (*codified at* 47 U.S.C. §§ 532(c)(4)(A)(i), (ii), (iii)) and 47 U.S.C. § 532 (c)(1)) (1992).

While the Commission generally has broad authority to adopt rules, such rules must relate to and advance Congress' purposes.[63/] Establishing an exception to the leased access rules to prevent the possibility of migration of only some networks does not advance any goal of Congress. As mentioned above, there is no evidence in record showing that the possible migration of a few home shopping networks to less expensive leased access carriage would result in financial harm to cable operators.[64/]

The courts have also made clear that regulatory agencies must interpret authorizing statutes to avoid constitutional issues.[65/] This is especially true in the context of the First Amendment. As the D.C. Circuit made clear in *Motion Picture Association of America v. FCC*,

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[63/] *See e.g., American Library Ass'n v. FCC*, 406 F.3d 689, 705 (D.C. Cir. 2005) (quoting *Aid Ass'n for Lutherans v. USPS*, 321 F.3d 1166, 1175 (D.C. Cir. 2003) ("[a]n agency construction of a statute cannot survive judicial review if a contested regulation reflects an action that exceeds the agency's authority.")).

[64/] To be sure, if a shopping network gave up a higher-priced carriage agreement in favor of obtaining carriage through less expensive leased access, the revenues of the cable operator would decrease. When Congress directed the Commission to avoid establishing leased access rules that would adversely affect the "financial condition" of a cable system, however, it could not have meant to avoid *any reduction* in cable revenue, for any leased access rate below that which a cable operator would otherwise charge would then violate the statute. Instead, the admonition in Section 612(c)(1) is more appropriately read to avoid a materially adverse impact on cable finances. And there is no evidence that the loss of revenue from migration of a few shopping networks would make a material difference in any cable system's finances. Even if such an impact could be shown on one or two cable systems, that would not justify the categorical exclusion of shopping networks the Commission adopted; those situations – if they exist – should be dealt with by waiver. *See, e.g.,* Third Report and Order, *Carriage of Digital Television Broadcast Signals: Amendment of Part 76 of the Commission's Rules*, 22 FCC Rcd 21064 ¶ 37 (2007) (permitting operators of cable systems with an activated channel capacity of 552 MHz or less to seek a waiver of the digital must carry rules).

[65/] *See, e.g., Debartolo Corp*. v. *Florida Gulf Coast Bldg & Constr. Trades Council.*, 485 U.S. 568, 575 (1988) ("[W]here an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems ….";
Bell Atl. Tel. Co. v. FCC, 24 F.3d 1441, 1445 (D.C. Cir 1994) ("Within the bounds of fair interpretation, statutes will be construed to defeat administrative orders that raise substantial constitutional questions.).

when dealing with regulations that directly impact the content of protected speech, the Commission has far less discretion and can only adopt speech regulations that are specifically contemplated by the Communications Act.[66/] As explained above, the Commission's decision to exclude only home shopping programmers from the modified leased access rates is an unconstitutional content-based regulation. Instead of avoiding constitutional issues, the Commission, by excluding one type of programming based on its content, proposes an interpretation of its authority that raises difficult and unnecessary constitutional issues.

Moreover, the Act is devoid of any evidence that Congress thought that treating home shopping programming differently from all other types of cable programming under the leased access rules was needed or allowable. By contrast, in establishing the cable must-carry regime in the 1992 Cable Act, Congress specifically directed that the Commission *initially* treat home shopping stations separately from other local broadcasters.[67/] Despite this explicit authority to exclude home shopping stations from its must carry rules if it found that they were not serving the public interest, the Commission itself held that home shopping stations should not be treated differently both because it found that they serve the public interest and also because it had doubts that it could do so in a constitutional manner.[68/] Had Congress intended to give the Commission authority to make content-based distinctions in adopting leased access regulations, it could easily

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[66/] 309 F.3d 796, 805 (D.C. Cir. 2002) ("To avoid potential First Amendment issues, the very general provisions of [the Communications Act] have not been construed to go so far as to authorize the FCC to regulate program context. Rather, Congress has been scrupulously clear when it intends to delegate authority to the FCC to address areas specifically implicating program content.").

[67/] 47 U.S.C. § 534 (g)(2).

[68/] *See Home Shopping Must Carry R&O* ¶ 43 n.122; *id.*, Separate Statement of Chairman Quello, n.1.

have done so as it did in another provision of the 1992 Act. The absence of any such statutory language alone should be dispositive of the Commission's lack of authority to treat shopping networks differently in its leased access rules.

III. Exclusion of Home Shopping Channels from the Revised Leased Access Rates Is Bad Public Policy

In addition to its statutory and constitutional failings, the Commission's decision to deny home shopping programmers the benefit of the revised leased access rate methodology should be rejected because it is bad policy. By excluding home shopping networks from the lower leased access rates expected from the modified rate formula, the Commission is both greatly limiting the ability of home shopping programmers to provide beneficial and entertaining service to cable subscribers across the country; it is also, contrary to its unfounded conclusion in the *FNPRM*, diminishing the diversity of information sources on cable.

As mentioned above, and as shown in the attached comments from Shop NBC viewers,[69/] home shopping programming provides unique benefits to the public. It provides an easy means of purchasing merchandise for both those who do not wish to (or cannot) leave their homes, as well as those who no longer want to deal with traditional shopping methods. Home shopping programming also helps to provide price competition to brick-and-mortar stores and Internet shopping websites, while also acting as a valuable source of consumer education. One of the reasons why Shop NBC's viewers greatly appreciate its programming is the detailed product information offered by Shop NBC's hosts.[70/] That information may be useful to consumers whether or not they buy the product from Shop NBC.

69/ *See* Exhibit B.

70/ *See id.*

The Commission itself has recognized that home shopping networks provide important benefits to the public and therefore serve the public interest.[71/] But, in addition to taking advantage of these benefits, many people watch home shopping programming because they consider it to be a valuable source of entertainment. The attached viewer comments show that many viewers watch Shop NBC because they truly enjoy Shop NBC's on-air personalities and the programs they host. The level of public appreciation for the benefits and entertainment provided by home shopping channels is demonstrated by the large number of viewers who watch home shopping programming on a regular basis. As mentioned above, home shopping television networks earned an estimated *ten billion dollars* in sales revenue in the United States in 2007.[72/] Further, a study done by the Electronic Retailers Association found that 10% of consumers in the United States purchased merchandise from a home shopping network in 2006.[73/] But despite clear evidence that home shopping programmers provide services that benefit the public, and further evidence that the public itself values and enjoys this programming, the Commission implemented a policy that will limit the opportunity of home shopping programmers to gain and/or maintain access to new cable platforms.

The Commission's actions leave home shopping channels to rely either on negotiated carriage agreements or on the average implicit fee rate formula — which, as explained below and

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[71/] *Home Shopping Must Carry R&O* ¶¶ 28, 43.

[72/] Manning Statement ¶ 3.

[73/] Industry Research, Facts & Figures, Electronic Retailing Association, http://www.retailing.org/new_site/memresources/research/facts_figures.htm#drivensales (last visited March 31, 2008).

in Shop NBC's earlier comments in this docket[74] — yields rates that are unaffordable to large and small independent programmers. As explained above, home shopping programmers, including Shop NBC, have found that some cable systems are not willing to enter into carriage agreements at all, while others only offer agreements that are financially unreasonable and would result in a channel losing money just to gain access. Faced with the choice of either unaffordable leased access rates or uneconomical and impractical carriage agreement proposals, Shop NBC and some other home shopping channels find themselves without carriage on many cable systems. Indeed, Shop NBC has not been able to obtain carriage on systems serving over thirty million cable subscribers. As noted above, excluding home shopping channels from the new rate formula out of a concern for "migration" makes no sense whatsoever: these channels have not been able to get onto many systems *at all*.

Paradoxically, while the Commission states that it is discriminating against home shopping channels to protect the diversity of voices on cable, its policy will actually have the opposite effect. As discussed above, a number of smaller, specialized shopping channels have been developed in the last 20 years. For example, as their names imply, Jewelry Television, which began its service in 1993, the Jewelry Channel, which began service in 2007, and GemsTV, which started programming in the U.S. in 2006, exclusively focus their sales on jewelry and gemstones. Similarly, Shop Latino TV, which started airing programming in July 2007, caters exclusively to Hispanic communities in the U.S. and Puerto Rico by being the only Spanish-speaking home shopping channel.

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[74] *See* Comments of Shop NBC, Notice of Proposed Rulemaking, MB Docket No. 07-42, filed Sept. 11, 2007, at 3-8 ("Shop NBC Comments").

Like Shop NBC, these small, specialized home shopping channels have faced proposed leased access rates that are too high, carriage demands that are impractical, or outright refusals to negotiate carriage agreements; as a result, they find themselves unable to gain access to many cable subscribers across the country. If home shopping programmers were allowed to use the new lower leased access rates like any other independent programmer, it would greatly expand their ability to gain carriage in areas where they currently do not provide service. Thus, by excluding home shopping programmers from relying on the more reasonable leased access rates, the Commission is acting to diminish and not promote the diversity of voices on cable.

IV. In Any Event, the Evidence for "Migration" Is Extremely Weak.

In the *FNPRM*, the Commission asks whether the application of the modified lease access rate system will cause migration of existing home shopping services to leased access.[75/] The Commission's assumption that widespread migration is inevitable if shopping networks are permitted to use the new leased access rates is, in fact, not justified.

As of today, there are only three shopping networks that have wide distribution on cable systems — HSN, QVC, and Shop NBC. While it is true that there are other home shopping programmers on different cable systems, the total number of full-time home shopping channels on a particular cable system under negotiated carriage agreements is rarely more than three.[76/] Therefore, the theoretical potential for migration is small to begin with as the total number of shopping channels which would be in a position to switch to lease access channels is very small.

This number that might be expected to migrate is even smaller when one takes into account the fact that negotiated carriage agreements provide benefits to home shopping

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[75/] *FNPRM* ¶ 75.

[76/] Manning Statement ¶ 6.

programmers that leased access does not.[77] For example, some carriage agreements provide home shopping networks with more prominent channel positions, which in turn lead to higher viewer numbers and higher sales. Instead of being relegated to the netherworld of leased access channel ranges, which tend to be segregated from the most popular cable channels, carriage agreements allow home shopping programmers to lock in channels that are near other popular program channels. This provides these networks both the exposure from viewers who channel surf away from high-traffic channels, as well as the audience recognition and loyalty that come from being on the same channel year after year. Further, relying on carriage agreements gives home shopping channels the opportunity to secure long-term carriage guarantees from cable providers. This affords these networks piece of mind knowing that for as long as their agreement is in effect they do not have to worry about losing their channel slot, a comfort this is lacking for those that rely on leased access. Carriage agreements also provide home shopping programmers with other benefits including the opportunity to enter into business ventures, such as joint marketing agreements, with cable operators.

The preference to rely on carriage agreements is also based on the fact that overall sales numbers tend to be higher when carriage is obtained by agreement and not by leased access. For example, Shop NBC's average net sales per cable subscriber are currently over 15% higher for viewers watching on systems where Shop NBC has a carriage agreement as opposed to those systems where Shop NBC relies on leased access.[78] This is true for numerous reasons. To start, leased access carriage tends to be part time and not full time, 24-hour a day service. Further, many channel guides, both those provided electronically and those available in print, do not

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[77] *Id*. ¶ 7.

[78] *Id*. ¶ 8.

include detailed information about leased access programmers. Both of these factors have a negative effect on viewer loyalty, which in turn leads to lower sales numbers.[79/]

The record in this proceeding also lacks any evidence that migration has been a major issue since leased access became an option for cable programmers. This absence of evidence exists even though occasionally programmers *are* able to negotiate leased access rates that are lower than negotiated carriage rates. While it may be true that the revised leased access rates will be even lower, there is nothing in the record to suggest that the new rates will be *so* much lower as to counteract the non-rate-related benefits of carriage agreements discussed above.

This is not to suggest that the current leased access rates are always — or even frequently — affordable to cable programmers like Shop NBC. As Shop NBC explained in its comments, the Marginal Implicit Fee system generally yields leased access rates that are uneconomical.[80/] This is especially true of the current maximum leased access rates offered to Shop NBC by many cable operators. As mentioned above, there are upwards of thirty million cable subscribers to which Shop NBC has not gained access.

Finally, the Commission seeks comment on the overall effect that migration of home shopping stations would have on individual cable systems. There is nothing in the record, as the Commission's question implicitly acknowledges, to support the Commission's conclusion that allowing home shopping programmers to use the modified leased access rates would have a materially adverse impact on cable operators' finances. To begin, the revised rate structure was designed to establish rates that will promote competition in cable programming without inflicting negative financial impact on cable operators. There is nothing about home-shopping

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[79/] Manning Statement ¶ 9.

[80/] *See* Shop NBC Comments at 3-8.

programmers that would lead their use of the modified rates to result in greater financial harm to cable operators as compared to any possible harm from their use by all other types of cable programmers.[81/] Moreover, as explained in detail above, if home shopping channels are permitted to rely on the revised leased access rates, then more specialized home shopping content and information would be available to consumers. This would add to the diversity of voices on cable, not subtract from it — thus advancing Congress' goals when it enacted Section 612 of the Communications Act.

[81/] The statute imposes a limit on the number of channels a cable system must provide for leased access and, in that way, provides a cap on the financial impact of leased access. If a cable system ultimately is required to offer less than the maximum number of channels for leased access, it may receive a benefit, but whether leased access channels are utilized by shopping networks or others would not have a materially different impact on the system.

Conclusion

For the reasons stated above, Shop NBC respectfully requests that the Commission reverse its decision to exclude home shopping programmers from using the modified lease access rate formula.

Respectfully Submitted,

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March 31, 2008

EXHIBIT A

STATEMENT OF ROBERT MANNING

1. This statement is being filed on behalf of ValueVision Media, Inc. d/b/a/ Shop NBC in support of its comments filed in response to the Further Notice of Proposed Rulemaking, released February 1, 2008, in *Leased Commercial Access*, MB Docket No. 07-42, FCC 07-208.

2. I am Vice President, Affiliate Relations for Shop NBC. I have been an employee of Shop NBC for the past 14 years. In my current position, I am responsible for negotiating carriage agreements with cable, satellite and all other distributors of video programming.

3. Home shopping television networks earned an estimated ten billion dollars in sales revenue in the United States in 2007.

4. In the last 20 years, most new home shopping channels are ones that cater to a specific audience or that offer specialized products.

5. There are over 30 million U.S. cable subscribers whom Shop NBC does not reach because it is not carried on their cable systems or it is carried only on a digital tier. Shop NBC has attempted to gain access to virtually every U.S. cable system, but has failed to obtain carriage on many of these 30 million subscribers' systems because neither leased access nor a agreement for carriage could be obtained on commercially feasible terms. Specifically, some cable operators are simply unwilling to enter into a carriage agreement with Shop NBC, while others offer terms and conditions for a proposed carriage agreement that are financially unreasonable and impractical, and would result in Shop NBC losing money. For many of these same operators, the leased access rates offered under the existing Marginal Implicit Fee system are unaffordable to Shop NBC.

6. In my experience, the total number of full-time home shopping channels carried on a particular cable system under a negotiated carriage agreement is rarely more than three.

7. Negotiated carriage agreements provide benefits to home shopping programmers that leased access does not. For example, I have negotiated carriage agreements with cable systems that provide Shop NBC with a prominent channel position, one that is not segregated from the more popular cable channels. Having a prominent channel position can help boost our viewership numbers and increase audience recognition and loyalty, which in turn can lead to higher sales. Relying on a negotiated carriage agreement also gives Shop NBC the opportunity to secure long-term carriage guarantees from cable providers, a benefit that is not available when we are forced to rely on leased access for carriage. I have also negotiated carriage agreements where Shop NBC has entered into joint promotional and marketing arrangements with the cable provider that help lessen marketing costs while raising viewer awareness of Shop NBC. In many cases, these agreements also provide for inclusion in cable programming guides or access to consumer billing services — valuable items not included in leased access arrangements.

8. Shop NBC's sales numbers are generally higher where carriage is attained through carriage agreement instead of leased access. For example, Shop NBC's average net sales per each full time cable subscriber are currently over 15% higher for viewers watching on systems where Shop NBC has a carriage agreement as opposed to those systems where Shop NBC relies on leased access.

9. Shop NBC has higher sales numbers per each full time cable subscriber on systems where it obtains carriage through a negotiated agreement for a number of reasons. First, leased access is often part time and subject to preemption. Second, many channel guides, both electronic and print, do not include detailed information about leased access programming. Combined, these two factors have a negative effect on viewer loyalty, which in turns lowers Shop NBC's sales numbers.

10. Shop NBC's programming content is more than just items for sale: it often involves substantial creative input from writers, producers, and directors.

11. Shop NBC's viewership includes substantial numbers of people who do not purchase items, but merely watch the programming for entertainment or information.

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

Robert Manning

Dated: March 31, 2008

EXHIBIT B

EMAIL COMMENTS RECEIVED BY SHOP NBC

Sent: Thu 5/11/2006 1:14 AM

Comment: I just love watching shopnbc especially when the macoy's are on they are such a lovely couple and that charla well she just makes your day alot brighter cause she always makes you laugh. You see I'm disabled and can't afford much and my life seems to have gone in a downward spiral so to watch your show and have your host put a smile on my face truely means alot. Please keep up the good work
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Sent: Wed 8/30/2006 6:17 PM

Comment: My husband and I both watch every night. I got him hooked to the point that sometimes he watches alone!! Our favorite hosts are Wes and Pam. I have Pam's faux furs, shearlings and leather jackets. I think she's is such a great designer and if I could afford it I'd buy much more. We love Margie also. We have 6 of her lamps, two of her side tables and I just ordered some trunks. I have also purchased many Invicta watches and other jewelry and Isomers. ShopNBC has made it possible for me to get items I never would be able to own otherwise. My husband is disabled. He had a heart transplant 12 years ago and now he must go to dialysis three times a week. Watching ShopNBC is something we can do together dispite his disabilities. Even though our income has changed because he no longer can work our home is warm and cozy because of Margie and I look great because of Pam!!!

Sent: Mon 7/23/2007 11:05 PM

Comment: I have been shopping at shopnbc for a while for watches. Tell Jim I'm on a limited budget due to being an amputee, recent kidney transplant patient. But I love to look good at a limited price. Thank you and Jim helping me to do that with the selections and prices.

Sent: Sun 7/22/2007 5:54 PM

Comment: It is so nice to be able to shop for top quality product without having to travel. I live in a rural part of the country and find it time consuming and expensive to try to shop for a variety of product. I find more variety on your site than I could, if I traveled to several stores.

Sent: Sat 7/21/2007 2:27 PM

Comment: Very convenient for a busy single guy like me. It's the ultimate "Shopping made easy".

Sent: Tue 7/3/2007 3:24 PM

Comment: That guy in the brown suit should be fired! I want to buy everything he talks about!! I much prefer shopNBC obver HSN or QVC as it is more interesting and informative about the products. I love that I can shop at home w/o going to big dept. stores where help is neglegible. I feel i can get all my questions answered before I buy. I like that.

Sent: Mon 7/2/2007 12:55 AM

Comment: I started watching Jim Skelton's watch shows about 18 months ago. The level of knowledge, transfer of enthusiasm, and ability to educate that Jim brings to the table is outstanding!! Thanks and keep it up! My only complaint (if you would even call it that) is the sleep I am losing due to the airing hours of some of the shows!! Surprisingly, I think I'll live!

Sent: Sun 6/17/2007 11:43 PM

Comment: I really enjoy you program I can set in mu easy chair and make buys without spending a dime for gas and fighting the crowds.

Sent: Sun 5/13/2007 8:41 AM

Comment: I discovered Shop Nbc after I escaped a violent marriage with nothing but my cat and my purse, I want to thank you all because with your beautiful and tasteful things I have built my new husband and myself a beautiful invitivg loving home to come home to. This is largely due to Margie's lamps and rugs to the beautiful jewelry wardrobe I am building - Thank you.

Sent: Sun 5/13/2007 1:11 AM

Comment: The host was a very good salesman. I had lost everything in Hurricane Katrina and am currently rebuilding my home (ever so slowly) but was so compelled to purchase for my new home because of the gentleman's ability so sell with details that no one else could provide. My purchase is being delivered to a friend's home and its going to paitently wait for my home to be completed.

Sent: Sat 4/28/2007 12:15 PM

Comment: ShopNBC has ended me having to go out in traffic, crowded malls and makes my shopping an enjoyable experience. The host are the best and know the product which they are selling. Their show is always on my tv and instead of watching commercials I use the remote and which them instead and sometimes I order. Thank you SHOP NBC you are the best.

Sent: Wed 4/18/2007 5:07 PM

Comment: Jim Skelton does a great job educating the new watch collector like myself and is entertaining to watch (no pun intended :) - my compliments to him and ShopNBC.

Sent: Fri 3/23/2007 4:45 PM

Comment: The quality of the products look exceptional. All the hosts are extremely nice and honest - not phoney. The hosts are very knowledgeable.

Sent: Mon 3/19/2007 3:05 PM

Comment: I AM A WATCH COLLECTOR, SHOPNBC DOES OFFER A NICE SELECTION OF WRIST WATCHES! YOU CANNOT FIND THE GREAT PRICES ON TIME PIECES IN OUR LOCAL MALLS PERIOD AS ON YOUR WEB SITE.

YOUR MAN JIM SKELTON IS THE POWER HOUSE ON YOUR WATCHES SALES.VERY INFORMATIVE ON THE FEATURES OF A TIME PIECE! HOPE TO SEE MORE OF YOUR WATCH OFFERINGS IN THE FUTURE.

Sent: Thu 3/8/2007 2:12 AM

Comment: I had not purchased a watch for myself in about 20 years. After catching the watch shows with Jim Skelton on shopnbc, I really appreciated the amount of product information and education that Jim Skelton brings to the show, he do not just sell but educate. This is what made me feel very good about making the purchase from shopnbc. I have to add, that I have not seen the type of quality of items that I have purchsed from shopnbc at the prices that I paid, in the retail store in my area.

Sent: Tue 3/6/2007 4:59 AM

Comment: I love your show, I have a hard time sleeping duw to a back injury and your show keps me company. I love all of your hosts. They all convey a very positive attitude.

Thank you for your show.

Sent: Wed 2/28/2007 10:49 AM

Comment: It is great that you offer value pay since some people may not be able to buy without it. I like to use it for higher priced items. I also like the fact tht I can look on my computer and see on the tv how the jewlery looks without going to many different stores. I usualy only order jewlery but I have also purchased hadbags also. I like the hosts also because they are just like a friend sharing a purchase with you. I am sure they need to "sell" also but the way that they present the items you don't feel any pressure to buy. The items seem to sell themselves. There is something for everyone.

Sent: Mon 2/19/2007 4:41 PM

Comment: I love ShopNbc. The host are very informative. They deliver all information thoroughly with a touch of humor. Your merchandise is topnotch and I love Jim Peterson. I have learned so much about electronics since I started watching him for approx past five years. Keep up the good work.

Sent: Tue 7/3/2007 7:04 PM

Comment: Enjoy watching shows and have purchased to much!! I have found that the host are not giving the information on color and clarity as often as they should. Remember alot of folks to not have computors to check these things out and I order on that Info. I think that has been and important part of your shows.

Sent: Tue 6/26/2007 8:13 AM

Comment: i recommend shopnbc. why? person answering phone: excelent, best customer service. host excellent (all of them, charla, i like her a lot. she makes me laugh) quality of items excelent. that is why you are my #1.

Sent: Thu 6/21/2007 2:17 PM

Comment: I love your jewelry shows, the show hosts are very noligable and entertaining and make shopping fun and painless. I like it that I don not see my jewelry on everyone else's hand.

Sent: Thu 6/14/2007 4:29 PM

Comment: I love ShopNBC !! It's very refreshing to find high-end shopping with with exceptional pricing. ShopNBC's hosts are so professional, guests are interesting, and customer service is very good(thank you for still having people!). I enjoy watching Bill and Sarah in the morning

and Charla any time I can, she is Soooo fun!

Sent: Thu 5/31/2007 3:54 PM

Comment: I have never found better values anywhere in watches. Keep up the good work and Jim Skelton is great.

Sent: Sun 5/27/2007 4:42 AM

Comment: Excellent at home shopping channel. Great hosts, especially Jim Skelton. Although only my second watch puchase on ShopNBC, I do try and watch Mr. Skelton every Sunday @ 4:00 pm eastern. I credit him for my sudden intrest in watches, I only have four now, but plan on buying more. ShopNBC can expect more business from me in the near future. Keep up the good work!

Sent: Mon 5/21/2007 4:40 PM

Comment: Wonderful sight, I watch for entertainment as much as for purchase....especially enjoy Jim Skelton and Sean with the watch shows.

Sent: Fri 5/18/2007 10:54 PM

Comment: I can honestly say that I truly enjoy Jim Skelton's watch shows above all other programming, I've come to look forward to staying up late in order to catch them. He makes the shows enjoyable and feel he is truly passionate about what he does and is quite entertaining. Jim's enthusiasm has turned me on to Invicta watches and pretty effortlessly seperates me from my money....with a smile on my face nonetheless in anticipation of my new favorite watch!!

Sent: Sat 3/31/2007 10:35 PM

Comment: My husband is addicted to ShopNBC--the watch programs in particular--so I checked it out with him. I shopped for his birthday present on this site today. From my own experience, I have to say I can see clearly why he's addicted the hosts are lively, they don't just drone on and on and you can't help but feel enthused with the products that they offer. You believe in their judgment of the product before you even possess it. When you actually get the product...well, you see that you weren't mislead! Great programs, great site, great shopping experience all around.

Sent: 2007

Comment: Wonderful shopping for the busy person at work and home. And, for those with disabilities to ambulatory shopping. Thanks Shopnbc for your quality, value payments and attention to detail for the consumer, like me. Thank for the opportunity to have purchased most of my entire jewelry collection in an affordable manner and look great!!!. And next, one day be able to leave my two grandchildren my jewelry collection to remember a "grandmother". (now that is truly a blessing) Again, thanks.

Sent: 2007

Comment: Must have been fate. Puppies got me up early. Flipping through channels and they was the perfect treadmill that I HAVE to use for health issues...yes all because of obesity. That incidious enemy that grows on you slowly till one day 20 years and 80 lbs have got behind me. This gives me motivation to get up and move in the privacy of my home. Thanks!

Sent: 2007

Comment: Shop NBC saved my sanity when I was confined to bed for 6 months and was able to interact with my tv set and receive a "gift" every few days.