NBC cable network bundle to MVPD offerings. The total expected departure rate for the bundle of networks – which range from **[REDACTED]**– is greater than the departure rate we predict for any individual NBCU O&O station (see the same rows in the last seven columns). Furthermore, although the disaggregated estimates are not shown here, the highest estimated departure rate for any single network (USA) is less than **[REDACTED]** of the departure rate for the total bundle. The latter evidence suggests that the overall bundle of NBCU cable networks is critical programming that MVPDs need to offer a competitive service that is attractive to consumers even if no individual network in the bundle were considered "marquee" programming. **[REDACTED]**

47. The estimated increases in national NBCU programming prices due to vertical integration are also shown in column 2 of Table 3. Prices are predicted to increase for all rivals, but **[REDACTED]** is predicted to experience the largest increase. Following the transaction, when **[REDACTED]** renegotiates its current affiliation agreement for the bundle of NBCU national cable networks, we would expect that the price will be **[REDACTED]** more per subscriber per month for the programming under the assumption of equal bargaining skill.[52] The expected increase in monthly per subscriber retransmission consent fees for the O&O broadcast signals that overlap with the Comcast footprint, shown in columns 3-9 of Table 3, exhibit similar patterns. Retransmission consent fees are predicted to increase for all rival MVPDs and by the largest amount for Telco distributors in DMAs where Comcast is the dominant cable provider.

Empirical Estimates of Vertical Price Effects

48. The Applicants argue that empirical estimates of increases in programming prices resulting from other instances of vertical integration provide more reliable evidence as to the expected change in program prices than estimates based upon the Nash bargaining model, which the Applicants term speculative. They used fixed effect estimation to empirically estimate actual programming price increases following four vertical transactions and found no evidence of post-integration increases in affiliation fees to rival MVPDs.[53]

49. We conclude that the study the Applicants performed to support the conclusion that vertical integration would not lead to increased programming fees to rivals is not reliable for two reasons. First, two of the events they studied, the sale of Bravo by Cablevision and the acquisition of the Travel Channel, are not probative because the vertical bargaining model would only predict a slight increase in the average national price for the programming at issue, given that Cablevision and Cox have very limited geographic footprints while Bravo and the Travel Channel are national networks.[54] The data available for the Applicants' analysis would be unlikely to have the statistical power to detect the small price increases those mergers would be estimated to generate. Second, the Applicants excluded a large portion of the sample due to missing ratings data, which they used to control for possible changes in programming quality.[55] Although the Applicants' study estimated substantial positive price effects, the small sample

[52] If we assume that NBCU has 2/3 of the bargaining skill, the estimated price change would be **[REDACTED]**. If we assume that NBCU has 1/3 of the bargaining skill we would expect Verizon's monthly per subscriber programming costs to rise by **[REDACTED]**.

[53] Applicants – Israel/Katz July Report at ¶ 86. Applicants' Response to Economist Workshop by Israel/Katz at 1-2 (Oct. 25, 2010).

[54] ACA – Rogerson August Report at 19-20.

[55] Nielsen ratings were used to control for potential post-integration changes in programming quality. However, they were missing for approximately half of the networks for which pricing data was available.

size resulted in the point estimates being statistically insignificant.[56]

50. We address these issues in the following manner. First, our analysis focuses solely on the vertical integration of the Fox programming bundle with DIRECTV in the *News Corp.-Hughes* transaction. As the first column of Table 3 demonstrates, the bargaining model estimates substantial post-integration price increases for the national networks involved in this transaction. Second, to control for possible changes in programming quality, we use monthly per subscriber programming expenses. Unlike ratings data, this measure of quality is available for nearly every network in our sample.

51. To estimate the effect of the vertical integration of Fox programming with the DIRECTV distribution platform in 2004 and subsequent disintegration in 2008, we use SNL Kagan annual affiliate fee data from 2002 to 2009 and employ a difference-in-differences model similar to the one estimated by the Applicants. The treatment group is composed of the national cable networks in which News Corp. had a controlling interest.[57] The control group consists of all networks that did not change vertical integration status during the estimation period.[58] We estimate two models in order to compare our estimates to the predicted changes in affiliate fees paid by MVPDs for the Fox cable networks shown in the first column of Table 3. In the first model, the dependent variable is the monthly per subscriber affiliate fee paid to the network. In the second model, the dependent variable is the percent change in programming fees from the previous year. The independent variable of interest in each model is the percentage of the last five years that the News Corp. programming was integrated with DIRECTV.[59] This approach, also employed by the Applicants, is used because we are unable to observe the date when the pre-transaction contracts were renegotiated following the merger. Since contracts can span multiple years, we would expect that the change in programming fees would increase with the time since vertical integration occurred. Finally, since national cable networks are typically sold in bundles, network prices under the same ownership control are unlikely to be independent. To account for this we cluster the standard errors by owner to allow for correlation of network prices over time and within the same ownership bundle.[60]

52. The estimated changes in affiliate fees following the *News Corp.-Hughes* transaction presented in Table 4 below generally confirm the price increase predictions for this bundle of programming previously derived from the bargaining model.[61] The results given in the first column imply that five years after the transaction, the average monthly price per network for News Corp. programming is expected to be a statistically significant **[REDACTED]** higher than would be the case

[56] *See* Applicants' Response to Economist Workshop by Israel/Katz at Table 1 (Oct. 25, 2010).

[57] The networks are: Fox Movie Channel, Fox News, Fox Soccer Channel, Fox Sports en Espanol, Fuel TV, FX Network, National Geographic, Speed, Fox Business Network and Fox College Sports.

[58] This restriction causes us to drop the Travel Channel, Bravo, Versus, as well as the entire bundle of Time Warner networks from our sample.

[59] The models also include year dummies, network fixed effects and a spline in the age of the network with knot points at the quintiles of the variable.

[60] This is the approach for accounting for serially correlated errors suggested by Marianne Bertrand, Esther Duflo & Sendhil Mullainathan, *How Much Should We Trust Differences-in-Differences Estimates*, 119 Q.J. OF ECON. 249-75 (2004). We also estimated the errors using a block bootstrap procedure drawing 500 bootstrap replicates with replacement and this yielded nearly identical results.

[61] The Fox networks included in the calculation are: Fox News Channel, Speed, FX, Fox Movie Channel, National Geographic, Fox College Sports, Fox Sports en Espanol, Fox Soccer, Fuel and the TV Guide network. Price increases to only DISH, Comcast and Cox are calculated due to the availability of SEC 10-K filing data (to calculate profit margins) for these firms.

absent integration. However, higher programming prices may be due either to increased investment in programming as a result of vertical integration, or to anticompetitive price effects. To distinguish between these two hypotheses, we add a three year moving average of monthly per subscriber programming investments to the model in the second column. The estimated effect is still a statistically significant **[REDACTED]** increase in the per network price of the bundle of News Corp. programming above what would be expected absent vertical integration. Comparing the estimated increase in per network programming prices to the predicted price changes in Table 3 again supports our view that the bargaining model provides reliable predictions. Averaging the predicted per network price increase estimated for DISH, Comcast and Cox yields a predicted increase of **[REDACTED]** per network, which is almost identical to the empirical estimate obtained after adjusting for changes in program quality. Similar results are obtained for the percentage point increase in programming fees shown in columns 3 and 4. Adjusting for programming quality, column 4 indicates vertical integration led to a **[REDACTED]** percentage point increase in the annual percentage change in programming prices. Accordingly, the evidence from past vertical transactions supports our conclusion that vertically integrating a video distributor and a national cable programmer leads to higher programming prices to rival MVPDs.**[REDACTED]**

C. Horizontal Price Increases

53. ACA's economist argues that the combination of a RSN and local broadcast station under the same ownership will result in higher programming fees.[62] This follows from a bilateral bargaining model. If the two networks are at least partial substitutes from the perspective of MVPDs, then the joint venture will be able to obtain a higher price for the two programming assets due to the unavailability of this substitute programming if the two sides fail to reach an agreement.[63] The combination of networks effectively decreases the BATNA of any MVPD that is negotiating with the joint venture over the price of the joint venture's programming.

54. We test ACA's claim that the combination of RSNs and local affiliates of major broadcast networks leads to higher programming charges by analyzing the change in affiliate fees following the integration of a Fox O&O broadcast station and a Fox RSN in the same local market under the joint ownership of News Corp relative to a control group of RSNs not under joint ownership with a broadcast station.[64] The data and model are similar to those employed in the analysis reported in Table 4 and estimated by the Applicants.[65] However, due to the small number of owner clusters in our RSN network sample and the fact that RSNs are generally not sold in bundles, we cluster the errors in this analysis by

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[62] ACA – Rogerson June Report at 9-18.

[63] ACA – Rogerson August Report at 24-26 and Applicants – Israel/Katz July Report at ¶¶ 97-98. Applicants argue that harm is unlikely because the NBC broadcast network and Comcast's RSNs are not sufficiently close substitutes. Israel/Katz July Report at ¶¶ 101-104 and Figure V.1.

[64] Affiliate fee and programming expense data were obtained from SNL Kagan (1997- 2009). The treatment group consists of Fox Sports Florida (2005-Present), Fox Sports North (2001-Present), Fox Sports Wisconsin (2001-2008), Fox Sports Midwest (1999-2008), Fox Sports South (1999-2008) and Sun Sports (1999-Present). FSN Northwest, Fox Sports Ohio, FSN Rocky Mountain and SportSouth were also horizontally integrated during the sample period but were excluded from the analysis due to a short integration period or a major change in format or programming carried.

[65] Applicants – Israel/Katz July Report at ¶¶ 122-125 and Applicants' Response to Economist Workshop by Israel/Katz at 1-2 (Oct. 25, 2010).

network.[66]

55. Our difference-in-differences model estimates are presented in columns 2 through 5 in Table 5 below.[67] The results generally support the conclusion that joint ownership of these two types of programming assets in the same region allowed the joint venture to charge a higher price for the RSN relative to what would be observed if the RSN and the local broadcast affiliate were separately owned. We find that five years after the horizontal integration of an RSN and O&O broadcast station, and after controlling for programming investment, News Corp. was able to charge affiliate fees for the RSN that were **[REDACTED]** higher than would be expected under separate ownership, although this estimate is not statistically significant. We do find a statistically significant **[REDACTED]** percentage point increase in the annual percent change in programming prices. This evidence is consistent with ACA's claim of potential for horizontal harms resulting from the transaction.**[REDACTED]**

D. Efficiencies

56. Another transaction-specific benefit claimed by the Applicants is the elimination of the double marginalization of programming costs.[68] According to economic theory, double marginalization occurs when an upstream (supplier) firm charges a wholesale price above marginal cost, which causes the downstream (buyer) firm to charge a higher price to consumers than it would if its price was based on the upstream firm's marginal cost. A vertically integrated firm would base its price to consumers on the upstream firm's marginal cost, so vertical integration would likely lead to a reduction in the price to consumers.

57. The Applicants observe that NBCU currently sells content to Comcast and other MVPDs at a per-subscriber price that is above the marginal cost of that programming.[69] They argue that a vertically integrated Comcast-NBCU, because it would use the lower marginal cost of programming as the basis for its pricing, will have an incentive to charge a lower price to consumers to attract more customers to Comcast's service. Since Comcast will initially internalize a portion of the payments it makes to NBCU, and will internalize the entire payment in the event it exercises its option to acquire sole ownership of the NBCU programming in the joint venture, Comcast will view the margin it earns per video distribution subscriber as larger and thus have an incentive to lower prices and increase output.[70]

58. Commenters and the Applicants' economists agree that Comcast will have this incentive only to the extent that the subscribers it attracts did not previously have access to NBCU content.[71] As a

[66] Monte Carlo simulations show that the robust variance estimator has good finite sample properties given the number of clusters employed in our previous empirical analysis of vertical pricing effects. If the RSN analysis were clustered by owner instead of network, these properties may no longer hold due to the small number of clusters. Gabor Kezdi, *Robust Standard Error Estimation in Fixed-Effects Panel Models*, HUNGARIAN STATISTICAL REVIEW, (Special English Volume 2004), at 95-116.

[67] The models also include year dummies, network fixed effects and a spline in the age of the network with knot points at the quintiles of the variable.

[68] *See, e.g.* Application at 70; Applicants - Rosston May Report at ¶¶ 80-90.

[69] *See* Applicants - Rosston May Report at ¶ 80.

[70] *See id.* at ¶ 83.

[71] This limitation arises because, for every subscriber that switches to Comcast from another MVPD, NBCU's revenues from the other MVPD are reduced by the amount that the other MVPD pays NBCU per subscriber. Thus, the net benefit to adding subscribers must include the "opportunity cost" of foregone revenues that those subscribers were earning for NBCU from their former MVPD. For subscribers that previously had access to NBCU content, this opportunity cost offsets what would otherwise appear to be a cost savings from the elimination of double

(continued....)

result, the additional customers that could potentially generate savings from eliminating double marginalization fall into three groups:[72] (1) those previously without MVPD service; (2) Comcast subscribers previously without access to some NBCU networks; and (3) rival subscribers previously without access to some NBCU networks.[73] Commenters and the Applicants agree that attracting new Comcast customers from a fourth group, rival subscribers currently with access to NBCU networks, would not generate any double marginalization savings.[74]

59. The Applicants claim that the elimination of double marginalization will lower Comcast's monthly per subscriber marginal costs by between **[REDACTED]** depending on the assumptions used.[75] The Applicants also claim, based upon a Bertrand-Nash pricing simulation, that subscriber weighted average consumer prices for MVPD service in the seven O&O DMAs that overlap with Comcast will fall by **[REDACTED]** and therefore the transaction will increase consumer welfare.[76]

60. Commenters question the reliability of certain evidence submitted in support of Applicants' choice of parameter values in this study.[77] They also argue that the study does not account for the fact that MVPD customers that currently do not purchase tiers with NBCU networks have demonstrated a lack of interest in this programming, so would be less responsive to a price drop on these tiers than customers of other MVPDs who already get this programming.[78] Finally, they say that the simulation exercise that the Applicants perform ignores harms to customers outside Comcast's footprint arising from higher programming prices to MVPDs (such as DIRECTV and DISH) that also serve subscribers in other regions.[79]

61. We do not credit the Applicants' claims as to the cost savings they will achieve from the elimination of double marginalization, and the resulting effect on subscriber prices, because they are insufficiently substantiated and because they likely overstate the actual benefits to the firm and consumers. First, as the Applicants acknowledge, their assumption that a price reduction in the expanded basic tier will lead rival subscribers currently with and without the NBCU networks to switch to

(...continued from previous page)
marginalization. ACA Rogerson August Report at 7-11; Applicants' Response to Rogerson by Israel/Katz at 2-3 (Oct. 25, 2010).

[72] If Comcast attracts new viewers for the NBCU networks, it would also benefit from increased NBCU advertising revenues.

[73] For example, MVPD customers might not have access to many NBCU networks if they subscribe to a "limited basic," "Spanish language" or "family" tier.

[74] Applicants' Response to Rogerson by Israel/Katz at 6 (Oct. 25, 2010).

[75] Applicants' Response to Rogerson by Israel/Katz at Table 5 (Oct. 25, 2010).

[76] *Id.* at 19.

[77] DIRECTV argues that the evidence about consumers responding to triple play promotions and of their historical tendency to switch tiers or MVPD providers is not informative about their likely response to a price drop on tiers with NBCU programming. DIRECTV – Murphy November Report at 7-10. They also argue that the data used by the Applicants substantially undercounts the number of other MVPD subscribers receiving NBCU programming. *Id.* at 12-13.

[78] *Id.* at 10-11.

[79] *Id.* at 14-17.

Comcast's MVPD service at equal rates is arbitrary,[80] and we find it implausible. Consumers with a revealed preference for NBCU programming, and high end video packages in general, would likely exhibit greater switching rates in response to a price reduction for these networks than consumers that have demonstrated they do not value the NBCU networks as highly.[81]

62. Second, the Applicants base their estimate of a key parameter, the rate at which customers currently without access to NBCU networks would switch to a higher tier with these networks in response to a small reduction in that tier's price, on the acceptance rate of a recent Comcast promotional offer for a "triple play" bundle of digital preferred video, broadband Internet access service and voice service.[82] We find this evidence inadequate to substantiate the estimated parameter. It is plausible that very few customers without NBCU programming – the customers whose switching rate Applicants seek to estimate – took this offer.[83] The vast majority were likely Comcast and rival customers who already subscribed to higher tier video services that included the NBCU networks but wanted to add voice and data services or switch such services from another provider.[84] Under such circumstances, double marginalization benefits would primarily come from attracting as new subscribers those consumers previously without any MVPD service, which is also likely a small group, so the double marginalization benefits would be much less than Applicants estimate.

63. The Applicants' model also does not account for the fact that the opportunity cost associated with rival subscribers switching to Comcast **[REDACTED]**. The Applicants assume that rival MVPDs pay the Comcast rate for NBCU programming, but we find that rival MVPDs**[REDACTED]**.[85]

[80] Applicants' Response to Rogerson by Israel/Katz at 10. Using the Applicants' notation, they assume that g3/h3 = g4/h4 where g3 is the number of customers in group 3 that switch and h3 is the population size of group 3; g4 and h4 are defined analogously.

[81] The Applicants also submitted a report where they assume no rival customers without NBCU networks switch to Comcast. This approach yielded lower double marginalization estimates, although still positive and substantial. Applicants – Israel/Katz November Report at 8-9.

[82] In particular, the Applicants rely on response rates to an offer sent to Comcast customers and rival MVPD subscribers for **[REDACTED]**. Applicants' Response to Rogerson by Israel/Katz at 11. **[REDACTED]**.

[83] Given that limited basic service currently costs $19.10 (www.comcast.com last accessed 12/21/2010), it is unlikely that many consumers with such a low willingness to pay for video services, if any, would take a promotional offer for a high end triple play package costing **[REDACTED]** DIRECTV also points out that many of their customers that do not receive NBCU programming are customers receiving Spanish language packages with little or no English language content. These customers would also be unlikely to switch due to a small price change for the higher tier.

[84] In their data analysis, Applicants assume without justification that all Comcast customers responding to the promotional offer are switching from a service tier that does not contain NBCU programming to a service tier that does, ignoring the possibility that these customers may be switching between tiers that both contain NBCU programming. If all customers accepting the promotion had previously obtained NBCU programming – the possibility they assume away – then Comcast would have no post-transaction incentive to lower prices on tiers containing NBCU programming and its double marginalization benefits would be zero even though the promotion attracted many customers. A simple example demonstrates this point. Suppose Comcast and a rival firm each has 100 subscribers. In response to the promotional offer, suppose the acceptance rate for customers of either firm without access to NBCU networks is zero, but that **[REDACTED]**. For this reason, the data that Applicants rely upon are uninformative as to the rate at which customers without access to NBCU programming would switch tiers in order to obtain that programming in response to a small reduction in the price of tiers that include NBCU programming.

[85] *See* 60NBCU0001520 (providing NBCU data for calculations).

This implies that every customer from a rival MVPD service that currently subscribes to a tier with NBCU networks and who switches to Comcast creates **[REDACTED]** than the Applicants assumed. Correcting this omission would also tend to lower any potential double marginalization benefits related to the transaction.

64. Finally, the Applicants' welfare calculations only measure the change in programming prices within the seven DMAs where Comcast will have joint ownership of an NBCU O&O station and a cable system. This approach does not account for the expected increases in national programming prices to subscribers of a rival distribution service (*e.g.* DBS) that reside outside of Comcast's footprint. Since affiliation agreements for national programming are negotiated on a nationwide basis, these consumers could potentially be harmed by the transaction and would not benefit from any transaction specific efficiencies since they do not live within Comcast's franchise area. The Applicants' analysis also does not account for the possibility of higher programming prices for firms that do not compete with Comcast (*e.g.* Cox) due to MFN clauses and the resulting changes in bargaining outcomes that we identified in the vertical section of this Appendix. All of these factors lead us to conclude that Comcast's subscribers may benefit from the elimination of double marginalization,[86] but that those benefits are likely to be substantially smaller than what the Applicants claim.

E. Program Carriage and Placement

65. A number of commenters argue that Comcast will have an increased incentive and ability to reduce competition from rival video programming networks or providers by denying carriage to unaffiliated networks that compete with its own affiliated networks, or only providing carriage under discriminatory terms and conditions.[87] Comcast could discriminate in price, channel placement or the number of systems that carry the programming. Although the Applicants maintain that they do not currently discriminate against competing unaffiliated networks, and that this will not change as a result of this transaction,[88] our analysis of Comcast's data on carriage and channel placement shows (1) that Comcast currently favors its affiliated programming in making such decisions and that (2) this behavior stems from anticompetitive motives rather than due to reasons that arise from vertical efficiencies. In consequence, the proposed transaction, which increases the scope of programming affiliated with Comcast's MVPD service, will likely lead to further anticompetitive discrimination unless appropriate conditions are imposed.

66. A vertically integrated MVPD may favor its own programming for either efficiency or anticompetitive reasons. A number of academic articles conclude that vertically integrated MVPDs tend to favor their own networks, but this finding is consistent with both a theory of anticompetitive harm and of welfare enhancing efficiency realizations due to vertical integration.[89] A finding of higher carriage rates for the affiliated networks is a necessary but insufficient condition for establishing the existence of anticompetitive foreclosure.

67. A method developed by Professor Austan Goolsbee in a recent Commission study, and adopted by the Applicants in this proceeding, provides a way to distinguish between the foreclosure and

[86] The evidence in the record is insufficient for us to quantify the magnitude of these benefits, however.

[87] Bloomberg Petition at 25; Entertainment Studios Comments at 15; NCAAOM Petition at 24; WealthTV Petition at 3; WGAW Comments at 8-9; Bloomberg Response at 17-20.

[88] Applicants' Response to Economist Workshop by Israel/Katz at 3-4.

[89] Applicants – Israel/Katz July Report at ¶¶ 142-143.

the efficiency hypotheses.[90] Goolsbee reasoned that if a vertically integrated MVPD favors its in-house networks for anticompetitive reasons, then increased competition within a geographic market should limit the ability of the vertically integrated MVPD to engage in such behavior. Based on this insight, Goolsbee developed an empirical test using firm-specific program carriage data: If the probability of favoring affiliated networks is found to decline as MVPD competition increases, then the integrated firm favors that programming for anticompetitive rather than efficiency reasons. In applying this test, he found evidence that nearly all vertically integrated firms for which he had carriage data tended to favor their own networks, and that this tendency was frequently motivated by anticompetitive foreclosure incentives.

68. We employ Goolsbee's empirical approach to test whether Comcast currently favors its networks and whether or not this is due to vertical efficiencies or foreclosure incentives. This analysis directly bears on the question of whether Comcast would also be likely to favor NBCU networks in an anticompetitive fashion after the transaction. We focus our study on the carriage decisions of Comcast for the four national networks in which it has a controlling interest that are carried on some but not most cable systems (Style, G4, Versus and Golf).[91] As Professor Goolsbee noted, for networks that are carried on nearly every system, there is little room to observe strategic behavior on the part of a vertically integrated firm since every distributor has enough capacity to carry these channels.[92]

69. The analysis is based on data from the Rovi Corporation, which provides the channel lineup of every MVPD in the country at the cable system headend. Using these data, we estimate a logit model to determine the probability that a headend carries a Comcast network as a function of a set of control variables. One of the controls is an indicator variable for whether the headend belongs to Comcast. A second is this indicator variable interacted with the share of the market that subscribes to DBS and Telco MVPD services.[93] The coefficients on these two variables are of primary interest for the carriage discrimination analysis. The Comcast indicator provides an estimate of how much more Comcast carries its own networks relative to the frequency with which other MVPD services carry them. This variable would be positive if Comcast carries its affiliated networks more than other MVPDs, but this result would be consistent with both the anticompetitive foreclosure and the efficiency hypotheses. The Comcast indicator interacted with the DBS and Telco market share variable is used to discriminate between the two explanations. This variable measures how Comcast's tendency to favor its affiliated networks changes with the degree of competition in the DMA. If this coefficient is negative and statistically significant, that would indicate that Comcast favors its own programming for anticompetitive reasons.

Carriage and Placement of Affiliated Networks

70. The empirical analysis supports the conclusion that Comcast discriminates against unaffiliated programming in favor of its own. The positive and statistically significant coefficient on the Comcast indicator variable in column 1 of Table 6 suggests that Comcast currently carries its own networks at a much higher rate relative to other MVPD systems. Furthermore, the negative and significant coefficient on the interaction between the Comcast indicator and the DBS and Telco share

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[90] Austan Goolsbee, *Vertical Integration and the Market for Broadcast and Cable Television Programming*, FCC Media Ownership Study (2007) ("Goolsbee").

[91] The E! Network is dropped from the analysis since it is carried on nearly all systems.

[92] Goolsbee at 26-27.

[93] The other control variables in the model are: share of the DMA that subscribes to DBS and Telco MVPD service, a spline of the number of channels carried at the headend to control for capacity, the percentage of residents in each zipcode by race category from the Census, percent of residents in each zip code that is female, percent that is under 18 or over 65, the log of median household income, the population per household and the percent of homes within the zipcode that are owner-occupied.

variable shows that in markets with relatively high levels of competition, Comcast reduces the carriage of its own networks. The bottom line of the table calculates the minimum share of households in the DMA that must subscribe to all other rival MVPD services in order to eliminate Comcast's incentive to discriminate in favor of its affiliated programming. For the specification in the first column, we find that Comcast's competitors would need to serve at least **[REDACTED]** of the region's subscribers (i.e. Comcast serves no more than **[REDACTED]**) to avoid Comcast's discriminating in favor of its affiliated programming.[94] The results are similar if the analysis is limited to Comcast's two least distributed networks G4 and Style, as reported in columns 3 and 4 of Table 6.

These results suggest that Comcast currently favors its affiliated programming and that it does so for anticompetitive reasons. This analysis supports our conclusion that these patterns of anticompetitive discrimination in carriage rates would likely extend to the carriage decisions related to NBCU networks after the proposed transaction unless appropriate conditions are imposed. This evidence regarding Comcast's past tendency to favor affiliated networks in carriage and placement decisions does not address whether Comcast has discriminated against any particular unaffiliated network in any specific case.**[REDACTED]**

71. Many commenters have argued that Comcast will likely favor its affiliated programming not only in carriage rates, as analyzed above, but also in channel placement. Goolsbee's model also permits an analysis of whether Comcast has also given its networks more favorable channel positions in the past. The model is specified as before, except the dependent variable is whether or not each Comcast network is carried on the more desirable analog tier of each MVPD system (channels 2 through 99).[95] The results from this channel placement analysis, reported in columns 5 and 6 of Table 6, are similar to those found in the network carriage analysis reported in the previous four columns. This analysis suggests that after the proposed transaction, Comcast would favor newly affiliated networks in channel placement, as well as in making carriage decisions, in order to harm competition.

[94] Column 2 reports the results of estimating the same model while weighting head ends by subscribers. The coefficient estimates are similar, but the interaction variable is no longer significant statistically. Columns 4 and 6 show that weighting does not alter the significance of the corresponding coefficient estimates when the analysis is performed for Comcast's two least distributed networks only or in the analysis of whether Comcast places its networks networks in more desirable channel positions on its system (the lower-numbered "analog tier"). These robustness tests do not lead us to question the interpretation we make of the unweighted models. The marginal effects reported for the two variables of interest near the bottom of each column calculate the change in the probability of carriage for a unit change in each variable at the sample means of all other variables in the model.

[95] The analog indicator variable in the Rovi data roughly approximates those networks carried on channels 2-99 on each headend in the data. Applicants – Israel/Katz July Report at ¶ 159, n.207.

APPENDIX C
Licenses to be Assigned or Transferred

The consolidated Application filed by Comcast, GE, and NBCU includes applications pertaining to the Commission's licenses listed below. They are separated below by type of licenses and, within each category, listed by licensee/registrant name, application file number, call sign, and/or other service-specific information, as appropriate. Interested parties should refer to the consolidated Application for a more detailed listing of the licenses. Each of the Applicants' subsidiaries or affiliates may hold multiple licenses of a particular type.

Part 25 – Satellite Communications Licenses

File No.	Licensee/Registrant	Call Sign(s)
Satellite Earth Stations		
SES-ASG-20100201-00147	TGC, Inc.	E050133
SES-ASG-20100201-00148	E! Entertainment Television, Inc.	E080069 E020009
SES-T/C-20100201-00149	The Comcast Network, LLC	E000423 E000360 E090030 E050129 E020281
SES-ASG-20100202-00150	NBC Telemundo License Co.	E020152 E870542 E980370 E980090 E980067 E960289 E940360 E940216 E060346 E873926 E870840 E870839 E870838 E870837 E860946 E860725 E860347 E860231 E090133 E090033 E070259 E070252 E070167 E070133

		E070047
		E060397
		E990553
		E060347
		E060345
		E060344
		E060330
		E060329
		E060328
		E060327
		E060326
		E060325
		E060324
		E060008
		E060006
		E050280
		E050139
		E4288
		E040464
		E040167
		E040097
		E020194
		E020193
		E020062
		E020061
		E010336
		E010105
		E000668
		E000667
		E000226
		E000129
		E000099
		E060193
		E873608
SES-LIC-20101203-01493	NBC Telemundo License Co.	E100132
SES-LIC-20101203-01494	NBC Telemundo License Co.	E100133
SES-T/C-20100201-00151	New England Cable News	E050107
		E940292
		E970108
SES-T/C-20100201-00152	Station Venture Operations, LP	E890143
		E030334
		E050232

Part 73 – Radio Broadcast Services Licenses

File No(s).	Licensee	Call Sign
BTCCDT-20100128AAG	NBC Telemundo License Co.	WCAU(TV)
BTCCDT-20100128AAH		WMAQ-TV
BTCCDT-20100128AAI		WNBC(TV)
BTCCDT-20100128AAJ		WRC-TV
BTCCDT-20100128AAK		WTVJ(TV)
BTCTT-20100128AAL		W58BU
BTCCDT-20100128AAM		WVIT(TV)
BTCCDT-20100128AAN		KNBC(TV)
BTCCDT-20100128AAO		KNTV(TV)
BTCCDT-20100128AAP		WNEU(TV)
BTCCDT-20100128AAQ		WNJU(TV)
BTCCDT-20100128AAR		WSCV(TV)
BTCCDT-20100128AAS		WSNS-TV
BTCCDT-20100128AAT		KDEN-TV
BTCCDT-20100128AAU		KHRR(TV)
BTCCDT-20100128AAW		KNSO(TV)
BTCCDT-20100128AAX		KSTS(TV)
BTCTT-20100128AAY		K15CU
BTCTTL-20100128ABA		K52FF
BTCTTA-20100128ABB		KEJT-LP
BTCTVL-20100128ABD		KMAS-LP
BTCCDT-20100128ABE		KTAZ(TV)
BTCCDT-20100128ABF		KTMD(TV)
BTCCDT-20100128ABG		KVDA(TV)
BTCCDT-20100128ABH		KVEA(TV)
BTCCDT-20100128ABK		KXTX-TV
BTCCDT-20100128ABL	Station Venture Operations, LP	KNSD(TV)
BTCCDT-20100128ABM		KXAS-TV
BTCCDT-20100128ABN	Telemundo of Puerto Rico	WKAQ-TV
BTCTTV-20100128ABO		W09AT
BTCTT-20100128ABP		W32AJ
BTCTT-20100128ABQ		W68BU
BTCCDT-20100128ABR	Telemundo Las Vegas License LLC	KBLR(TV)
BALCDT-20100128ABS	NBC Telemundo License Co.	WCAU(TV)
BALCDT-20100128ABT		WMAQ-TV
BALCDT-20100128ABU		WNBC(TV)
BALCDT-20100128ABV		WRC-TV
BALCDT-20100128ABW		WTVJ(TV)
BALTT-20100128ABX		W58BU
BALCDT-20100128ABY		WVIT(TV)
BALCDT-20100128ABZ		KNBC(TV)
BALCDT-20100128ACA		KNTV(TV)

BALCDT-20100128ACB	WNEU(TV)
BALCDT-20100128ACC	WNJU(TV)
BALCDT-20100128ACD	WSCV(TV)
BALCDT-20100128ACE	WSNS-TV
BALCDT-20100128ACF	KDEN-TV
BALCDT-20100128ACG	KHRR(TV)
BALCDT-20100128ACI	KNSO(TV)
BALCDT-20100128ACJ	KSTS(TV)
BALTT-20100128ACK	K15CU
BALTT-20100128ACL	K46GF
BALTT-20100128ACM	K52FF
BALTTA-20100128ACN	KEJT-LP
BALTVL-20100128ACP	KMAS-LP
BALCDT-20100128ACQ	KTAZ(TV)
BALCDT-20100128ACR	KTMD(TV)
BALCDT-20100128ACS	KVDA(TV)
BALCDT-20100128ACT	KVEA(TV)
BALCDT-20100128ACU	KWHY-TV
BALTT-20100128ACV	K47GD
BALCDT-20100128ACW	KXTX-TV

Parts 90 and 101 - Private Land Mobile and Private Fixed Microwave Licenses

File No.	Licensee	Lead Call Sign
0004101576	Comcast SportsNet Mid-Atlantic, L.P.	WPWF842
0004101702	Comcast SportsNet Philadelphia, L.P.	WQAW846
0004105041	Versus, L.P.	WPTR291
0004106409	TGC, Inc.	WPWN254
0004106423	E! Entertainment Television, Inc.	WPVJ725
0004101711	Station Venture Operations, LP	WPQY246
0004101741	Telemundo of Puerto Rico	WQES973
0004101787	Telemundo Las Vegas License LLC	WQGR453
0004101864	Universal City Property Management II LLC	KD22853
0004101869	Universal City Development Partners, LTD	WNTH512
0004102148	NBC Telemundo License Co.	KB81618
0004102460	Universal City Studios LLLP	KB85978

APPENDIX D
Ownership and Contribution Tables

NBCU OWNERSHIP INTERESTS[1]

NBCU Ownership Interests		Ownership Interest (Full, Majority, Half, Minority)	Contribute to Joint Venture?
Attributable broadcast television stations	WNEU, Merrimack, NH	Full	Yes
	WWDP, Norwell, MA	Minority	Yes
	WMAQ-TV, Chicago, IL	Full	Yes
	WSNS-TV, Chicago, IL	Full	Yes
	KXAS-TV, Fort Worth, TX	Majority	Yes
	KXTX-TV, Dallas, TX	Full	Yes
	KDEN-TV, Longmont, CO	Full	Yes
	KNSO, Merced, CA	Full	Yes
	WVIT, New Britain, CT	Full	Yes
	KTMD, Galveston, TX	Full	Yes
	KBLR, Paradise, NV	Full	Yes
	KNBC, Los Angeles, CA	Full	Yes
	KVEA, Corona, CA	Full	Yes
	KWHY-TV, Los Angeles, CA	Full	No
	WSCV, Fort Lauderdale, FL	Full	Yes
	WTVJ, Miami, FL	Full	Yes
	WNBC, New York, NY	Full	Yes
	WNJU, Linden, NJ	Full	Yes
	WCAU, Philadelphia, PA	Full	Yes
	KTAZ, Phoenix, AZ	Full	Yes
	WKAQ-TV, San Juan, PR	Full	Yes
	KETJ-LP, Salt Lake City, UT	Full	Yes
	KVDA, San Antonio, TX	Full	Yes
	KNSD, San Diego, CA	Majority	Yes
	KNTV, San Jose, CA	Full	Yes
	KSTS, San Jose, CA	Full	Yes
	KHRR, Tucson, AZ	Full	Yes
	WRC-TV, Washington DC	Full	Yes

[1] *See* Letter from David H. Solomon, Counsel to NBC Universal, Inc. to Marlene H. Dortch, Secretary, FCC (Nov. 18, 2010).

NBCU Ownership Interests		Ownership Interest (Full, Majority, Half, Minority)	Contribute to Joint Venture?
Broadcast Programming Networks	NBC	Full	Yes
	Telemundo	Full	Yes
Controlled International Entities	CFN Class Financial Network Spa	Majority	Yes
	Estudios Mexicanos Telemundo, SA de CV	Full	Yes
	Film Distribution and Service SCRL	Full	Yes
	The History Channel GmbH	Half	Yes
	Geneon Universal Entertainment Japan LLC	Majority	Yes
	NGC Network (Singapore) Pte. Ltd.	Half	Yes
	UIP-Danube International Pictures LTD	Half	Yes
	United International Pictures	Half	Yes
	Universal Studiocanal Video	Half	Yes
	USA Brazil Programadora Ltda.	Half	Yes
Non-Broadcast Programming Networks	A&E Television Networks	Minority	Yes
	Bravo	Full	Yes
	Chiller	Majority	Yes
	CNBC	Full	Yes
	CNBC World	Full	Yes
	MSNBC	Full	Yes
	MUN2	Full	Yes
	Oxygen	Full	Yes
	ShopNBC	Minority	Yes
	Sleuth	Full	Yes
	SyFy	Full	Yes
	The Weather Channel	Minority	Yes
	Universal HD	Full	Yes
	Universal Sports	Minority	Yes
	USA	Full	Yes
Movie Producers	Universal Studios	Full	Yes
	Focus Features	Full	Yes
	Working Title	Full	Yes
	Arenas Entertainment	Minority	Yes
	CR Films	Half	Yes

NBCU Ownership Interests		Ownership Interest (Full, Majority, Half, Minority)	Contribute to Joint Venture?
Wholesale Movie Distributors	Universal Studios	Full	Yes
	Focus Features	Full	Yes
	Working Title	Full	Yes
	Arenas Entertainment	Minority	Yes
Video Programming Producers	Universal Cable Productions	Full	Yes
Wholesale Video Programming Distributors	Universal Media Studios	Full	Yes
	News	Full	Yes
	MSNBC	Full	Yes
	CNBC	Full	Yes
	CNBC World	Full	Yes
	Telemundo (Telemundo Studios, Mun2, Telemundo O&Os)	Full	Yes
	NBC O&Os	Full	Yes
	Digital Studios	Full	Yes
	Sports, Olympics & NFL	Full	Yes
	driverTV	Minority	Yes
	Miss Universe	Half	Yes
	QUBO	Minority	Yes
	Universal Sports	Minority	Yes
Online Video Programming Distributors	bravotv.com	Full	Yes
	chillertv.com	Majority	Yes
	CNBC.com	Full	Yes
	holamun2.com	Full	Yes
	hulu.com	Minority	Yes
	MSNBC.com	Half	Yes
	NBC.com	Full	Yes
	nbcolympics.com	Full	Yes
	nbcsports.com	Full	Yes
	oxygen.com	Full	Yes
	sleuthchannel.com	Full	Yes
	syfy.com	Full	Yes
	telemundo.com	Full	Yes
	universalhd.com	Full	Yes
	usanetwork.com	Full	Yes

NBCU Ownership Interests		Ownership Interest (Full, Majority, Half, Minority)	Contribute to Joint Venture?
	weather.com	Minority	Yes
	driverTV.com	Minority	Yes
	universalsports.com	Minority	Yes
Other	Universal Studios Hollywood	Full	Yes
	Universal Orlando Resort	Half	Yes

COMCAST OWNERSHIP INTERESTS[2]

Comcast Ownership Interests		Ownership Interest (Full, Majority, Half, Minority)	To Be Contributed to Joint Venture?
Cable systems in the following states:	CA; GA; UT; FL; AZ; CO; NM; WA;	Full	No
	MN; WI; MA; CT; NH; VT; ME; NY;	Full	No
	TX; OR; IL; IN; MI; PA; MD; WV; OH;	Full	No
	KY; TN; VA; NJ; NC; LA; DE; SC;	Full	No
	MO; KS; AL; MS; DC; AR; ID	Full	No
	MidContinent Communications[3]	Half	No
	US Cable of Coastal Texas, LP	Minority	No
Non-broadcast properties:	E!	Full	Yes
	Golf Channel	Full	Yes
	Versus	Full	Yes
	Style	Full	Yes
	G4	Full	Yes
	PBS Kids Sprout	Minority	Yes
	TV One	Minority	Yes
	ExerciseTV	Majority	Yes
	FEARnet	Minority	Yes
	The Comcast Network	Full	Yes
	Comcast SportsNet California (formerly "Comcast SportsNet West")	Full	Yes
	Comcast SportsNet Mid-Atlantic (formerly "Home Team Sports")	Full	Yes
	Comcast SportsNet New England (formerly "Fox Sports Net New England")	Full	Yes
	Comcast SportsNet Northwest	Full	Yes
	Comcast SportsNet Philadelphia	Full	Yes

[2] *See* Letter from Michael H. Hammer, Counsel for Comcast Corporation, to Marlene H. Dortch, Secretary, FCC (Nov. 19, 2010).

[3] According to a press release, Midcontinent Communications launched a local sports network, Midco Sports Network, on August 18, 2010. Midco Sports Network is a division of Midcontinent Communications and, according to its website, covers teams from NCAA Division I and II, the Northern Sun Intercollegiate Conference, and the Summit League, as well as high school and youth sports events. Midcontinent Communications, *Midcontinent Launches New Sports Network* (press release), Aug. 18, 2010, *available at* http://www.midcocomm.com/pressroom/NewsDetail772.cfm?ID=0,115; MidCo SN, About Us, at http://www.midcosportsnet.com/aboutus/ (last visited Nov. 5, 2010).

Comcast Ownership Interests		Ownership Interest (Full, Majority, Half, Minority)	To Be Contributed to Joint Venture?
	Comcast Sports Southwest	Full	Yes
	Comcast Sports Southeast	Majority	Yes
	Comcast SportsNet Bay Area (formerly "Fox Sports Net Bay Area")	Majority	Yes
	Comcast SportsNet Chicago	Minority	Yes
	SportsNet New York	Minority	Yes
	The Mtn. MountainWest Sports Network	Half	Yes
	New England Cable News	Full	Yes
	Comcast Hometown Network	Full	No
	C2	Full	No
	CN100	Full	No
	Comcast Entertainment Television	Full	No
	Comcast Television Network	Full	No
	Pittsburgh Cable News	Minority	No
	Current Media	Minority	No
	MLB Network	Minority	No
	NHL Network	Minority	No
	Retirement Living Television	Minority	Yes
	Saigon Broadcasting Television Network	Half	Yes
	Television Korea 24[4]	Minority	Yes
Online Video Properties	Fandango	Full	Yes
	Daily Candy	Full	Yes
	Fancast	Full	No
	Comcast.net	Full	No
	Movies.com	Full	Yes
	E!	Full	Yes
	Golf Channel	Full	Yes
	Versus	Full	Yes
	Style	Full	Yes
	G4	Full	Yes
	PBS Kids Sprout	Minority	Yes
	MGM	Minority	No

[4] Comcast previously indicated that it has an attributable interest in tvK24. It has now determined that tvK24 is comprised of two network feeds, tvK24 1 and tvK24 2.

Comcast Ownership Interests		Ownership Interest (Full, Majority, Half, Minority)	To Be Contributed to Joint Venture?
	Music Choice	Minority	No
	TV One	Minority	Yes
	ExerciseTV	Majority	Yes
	FEARnet	Minority	Yes
	The Comcast Network	Full	Yes
	Comcast SportsNet California (formerly "Comcast SportsNet West")	Full	Yes
	Comcast SportsNet Mid-Atlantic (formerly "Home Team Sports")	Full	Yes
	Comcast SportsNet New England (formerly "Fox Sports Net New England")	Full	Yes
	Comcast SportsNet Northwest	Full	Yes
	Comcast SportsNet Philadelphia	Full	Yes
	Comcast Sports Southwest	Full	Yes
	Comcast Sports Southeast	Majority	Yes
	Comcast SportsNet Bay Area (formerly "Fox Sports Net Bay Area")	Majority	Yes
	Comcast SportsNet Chicago	Minority	Yes
	SportsNet New York	Minority	Yes
	The Mtn. MountainWest Sports Network	Half	Yes
	New England Cable News	Full	Yes
	Comcast Hometown Networks	Full	No
	C2	Full	No
	CN100	Full	No
	Pittsburgh Cable News	Minority	No
	Current Media	Minority	No
	MLB Network	Minority	No
	NHL Network	Minority	No
	Retirement Living Television	Minority	Yes
	Saigon Broadcasting Television Networks	Half	Yes
	Television Korea 24	Minority	Yes
Other:[5]	**[REDACTED]**	**[REDACTED]**	No

[5] **[REDACTED].**

Comcast Ownership Interests		Ownership Interest (Full, Majority, Half, Minority)	To Be Contributed to Joint Venture?
	[REDACTED]	[REDACTED]	No
	[REDACTED]	[REDACTED]	No
	[REDACTED]	[REDACTED]	No
	[REDACTED]	[REDACTED]	No
	[REDACTED]	[REDACTED]	No
	Security Broadband Corp.	Minority	No
	Beaumaris Network, Inc.	Minority	No
	BelAir Networks, Inc.	Minority	No
	Broadlogic Network Technologies Inc.	Minority	No
	Bubble Motion, Inc.	Minority	No
	Canoe Ventures, LLC	Minority	No
	CarWoo, Inc.	Minority	No
	Cedar Point Communications	Minority	No
	Clearwire Communications LLC	Minority	No
	Combined Conditional Access Development and Support, LLC	Half	No
	Darby Technology Ventures Group, LLC	Minority	No
	DemDex, Inc.	Minority	No
	Disson Skating, LLC	Half	No
	DoubleVerify, Inc.	Minority	No
	DriverTV LLC	Minority	No
	E! Distribution, LLC	Half	Yes
	E! Entertainment Television Latin America Partners	Half	Yes
	EdgeConnex, Inc.	Minority	No
	First Round Capital 2007 Annex Fund, LLC	Minority	No
	Genacast Ventures, LLC	Majority	No
	Global Spectrum (NEC)	Half	No
	Global Spectrum Asia Ltd.	Minority	No
	Global Spectrum Pico Pte. Ltd.	Majority	No
	iControl Networks, Inc.	Minority	No
	[REDACTED]	[REDACTED]	No
	Jingle Networks, Inc.	Minority	No
	JiWire, Inc.	Minority	No
	[REDACTED]	[REDACTED]	No

Comcast Ownership Interests		Ownership Interest (Full, Majority, Half, Minority)	To Be Contributed to Joint Venture?
	Erdos LLC	Half	No
	MGM Holdings, Inc.[6]	Minority	No
	Music Holdings Corp.	Minority	No
	National Cable Communications LLC	Majority	No
	OCAP Development LLC	Half	No
	PackLate.com	Minority	No
	Plaxo	Full	No
	RGB Networks, Inc.	Minority	No
	Sedna Patent Services, LLC	Minority	No
	SKC Hangar Partners	Minority	No
	Skyview T.V. Inc.	Minority	No
	The New York Interconnect LLC	Minority	No
	Visible World Inc.	Minority	No
	Vitrue, Inc.	Minority	No
	Vyatta, Inc.	Minority	No
	thePlatform	Majority	No
	iN Demand	Majority	No

[6] Comcast presently holds a minority, non-controlling ownership interest of approximately 21 percent in MGM Holdings, Inc. ("MGM Holdings"), the ultimate parent of Metro-Goldwyn-Mayer, Inc. ("MGM"). Comcast has no role in the management or operation of MGM or MGM Holdings. Comcast's representative on the boards of MGM and MGM Holdings resigned in March of 2009, and Comcast does not currently have a representative on either company's board. On November 3, 2010, MGM, MGM Holdings and certain of their affiliates filed for bankruptcy in New York, proposing a pre-packaged restructuring plan that would eliminate Comcast's ownership interest. *See* Joint Prepackaged Plan of Reorganization of Metro-Goldwyn-Mayer Studios Inc. and Certain of its Affiliates dated October 7, 2010, *In re Metro-Goldwyn-Mayer Studios Inc., et al.*, Case No. 10-15774 (SMB) [Docket No. 28] (Bankr. S.D.N.Y. Nov. 3, 2010). At such time as the bankruptcy plan is approved, Comcast will no longer have an ownership interest in MGM or MGM Holdings. Comcast's interest in MGM and MGM Holdings is not being contributed to NBCU in the transaction.

APPENDIX E
Model Protective Order

Before the
AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between	)	
	)	
____________________,	)	
	)	
Claimant,	)	
	)	
-and-	)	Case No. ____________
	)	____________, Arbitrator
____________________,	)	
	)	
Respondent.	)	
____________________	)	

CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER

1. This Confidentiality Agreement and Protective Order (the "Agreement") is intended to protect trade secrets and other commercially and competitively sensitive confidential information contained in (i) documents that are produced, given or exchanged by and among the Parties, or produced by non-parties, and deposition testimony provided, as part of discovery in the Proceeding, and (ii) documents and testimony submitted as part of the record in the course of the Proceeding or any review of the Proceeding by the Commission or a court of competent jurisdiction.

2. Definitions.

(a) Arbitrator. "Arbitrator" means ______________, or any successor arbitrator assigned to this proceeding.

(b) Authorized Representative. "Authorized Representative" means an individual who has signed and filed a Declaration in the form of Attachment A to this Agreement and is one of the following:

(i) Outside Counsel of Record for a Reviewing Party to this Proceeding, or any associated attorney, paralegal, clerical staff member or other employee of Outside Counsel of Record's law firm reasonably necessary to render professional services in this Proceeding;

(ii) Outside Experts engaged by a Reviewing Party to this Proceeding, or any associated clerical or support staff member or other employee of the Outside Expert's firm reasonably necessary to render professional services in this Proceeding; and

(iii) the Arbitrator, or any associated clerical or support staff member or other employee reasonably necessary to render professional services in this Proceeding.

(c) Commission. "Commission" means the Federal Communications Commission or any bureau or subdivision of the Commission acting pursuant to delegated authority.

(d) Confidential Information. "Confidential Information" means information, whether in oral or written form, so designated by a Designating Party (hereinafter defined) upon a determination in good faith that such information constitutes trade secrets or commercial or financial information privileged or confidential within the meaning of Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4) or any other *bona fide* claim of right or privilege. Confidential Information includes additional copies of, notes regarding, and information derived from Confidential Information. Confidential Information also includes transcripts of hearing sessions to the extent described in Paragraphs 5 and 6. Terms of this Agreement referring to Confidential Information apply equally as to Highly Confidential Information (defined below).

(e) <u>Declaration</u>. "Declaration" means a sworn declaration in the form of Attachment A to this Agreement.

(f) <u>Designating Party</u>. "Designating Party" means a person or entity that seeks confidential treatment pursuant to this Agreement for Confidential Information submitted in this Proceeding.

(g) <u>Highly Confidential Information</u>. "Highly Confidential Information" means Confidential Information so designated by a Designating Party upon a determination in good faith that such information would, if disclosed to a current or potential counterparty or competitor of the Designating Party, significantly disadvantage the current or future negotiating or competitive position of the Designating Party or any other party to this Agreement. Highly Confidential Information includes additional copies of, notes regarding, and information derived from, Highly Confidential Information. Highly Confidential Information includes, without limitation, the Protected Third Party Agreements (as defined below).

(h) <u>Outside Counsel of Record</u>. "Outside Counsel of Record" means the firms of attorneys, or sole practitioners, as the case may be, representing the Parties in this Proceeding, including their attorneys, paralegals, clerical staff and other employees of outside counsel, and vendors reasonably necessary to render professional services in this Proceeding, provided that such persons are not involved in competitive decision-making, *i.e.*, Outside Counsel of Record's activities, association, and relationship with a Party do not involve advice about or participation in the business decisions of the Party or any competitor of a Designating Party nor the analysis underlying the business decisions. For the avoidance of doubt, Outside Counsel of Record shall exclude any employee of any of the Parties and includes the following law firms only:

[Insert Firm Name]

[Insert Firm Name]

(i) <u>Outside Expert</u>. "Outside Expert" means a person who, in addition to any other work for the Reviewing Party or others, is retained or employed as a *bona fide* expert to furnish testimony and/or technical or other expert advice or service, or who is otherwise engaged to prepare material for the express purpose of participating in this Proceeding, whether full or part time, by or at the direction of the Reviewing Party's Outside Counsel of Record, as well as personnel associated with such person who provide support or clerical services or other employees of such expert's firm reasonably necessary to render professional services in this Proceeding, provided that such persons are not involved in competitive decision-making, *i.e.*, Outside Expert's activities, association, and relationship with a Party do not involve advice about or participation in the business decisions of the Party or any competitor of a Designating Party nor the analysis underlying the business decisions. For the avoidance of doubt, Outside Expert shall exclude any employee of any of the Parties.

(j) <u>Parties</u>. The "Parties" to this Proceeding are ______________________________. No other entity or natural person may become a Reviewing Party in this Proceeding absent the express, written consent of all of the Parties and the express, written authorization of each signatory hereto. No entity or natural person other than one of the Parties or a non-party who produces documents or gives testimony in this Proceeding may become a Designating Party in this Proceeding absent the express, written consent of all of the Parties and the express, written authorization of each signatory hereto.

(k) Reviewing Party. "Reviewing Party" means a Party whose Authorized Representative has signed a Declaration.

(l) Proceeding. "Proceeding" means only the proceeding to arbitrate the dispute between the Parties, known as Case No. _______________, currently pending before the American Arbitration Association together with any appeal thereof, and does not include the arbitration or adjudication of any other complaint or matter.

(m) Protected Third Party. "Protected Third Party" shall mean any entity other than the Parties that agrees in writing with the Parties to produce information for this Proceeding as a Designating Party subject to the terms of this Agreement.

(n) Protected Third Party Agreements. "Protected Third Party Agreements" shall mean agreements, together with any term sheets, amendments, extensions, modifications, addenda, and other agreements related thereto, between any Party and any Protected Third Party (or any subsidiaries or affiliates thereof).

3. Claim of Confidentiality. A Designating Party shall, prior to disclosing to any other party any Confidential Information, designate such information (excluding Highly Confidential Information) by placing the legend "CONFIDENTIAL" in a conspicuous place on the front page (or other appropriate place) of each document, record, or other material containing such information. The inadvertent failure to designate a document or data as Confidential Information does not constitute a waiver of such claim and may be corrected by supplemental written notice at any time, accompanied by a copy of the document or data bearing the appropriate legend, with the effect that such document or data shall be subject to the protections of this Agreement from the time it is designated as Confidential Information.

4. Procedures for Claiming Documents and Data Are Highly Confidential.

(a) Documents or data comprising Protected Third Party Agreements (or any material contained therein or any copies or derivative works thereof) or other Highly Confidential Information shall be designated as Highly Confidential Information for purposes of this Agreement by affixing the legend "HIGHLY CONFIDENTIAL INFORMATION SUBJECT TO CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER IN CASE NO. ______________" to the front page of the document or, for data, to the outside of the container or medium in which the data is produced. A Designating Party shall, prior to disclosing to any other party any Highly Confidential Information, ensure that any Reviewing Party (and any representative thereof) is authorized under this Agreement to receive such Highly Confidential Information (including, without limitation, that such Receiving Party has executed the Declaration and that any applicable waiting period has expired). The inadvertent failure to designate a document or data as Highly Confidential Information does not constitute a waiver of such claim and may be corrected by supplemental written notice at any time, accompanied by a copy of the document or data bearing the appropriate legend, with the effect that such document or data shall be subject to the protections of this Agreement from the time it is designated as Highly Confidential Information.

(b) Highly Confidential Information submitted in writing to the Arbitrator shall be filed under seal and shall bear on the front page in bold print, "HIGHLY CONFIDENTIAL INFORMATION SUBJECT TO CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER IN CASE NO. _______________." Such filings shall also comply with Paragraph 13 of this Agreement.

5. Highly Confidential Information in Deposition Testimony, Oral Hearing Testimony and Oral Argument. If any Reviewing Party desires to include, utilize, or refer to any Highly Confidential Information in testimony or exhibits during the Proceeding or during a deposition in such a manner that might require disclosure of such material, it shall serve such Highly Confidential Information in a manner reasonably calculated to ensure that its confidentiality is maintained. Examination of a witness, or other oral presentation, concerning Highly Confidential Information shall be conducted in camera and closed to

all persons except Authorized Representatives of Reviewing Parties and the Arbitrator, a witness then testifying, and any reporter engaged to transcribe the Proceeding. Persons present at the Proceeding may not disclose any Highly Confidential Information to any person that is not an Authorized Representative of a Reviewing Party, except that Highly Confidential Information may be used with a witness that has prior knowledge of such information obtained through lawful means.6. Designation of Highly Confidential Information in Transcripts.

(a) Deposition testimony relating to Protected Third Party Agreements or other Highly Confidential Information shall be designated as Highly Confidential Information by (i) a statement on the record, by counsel, at or before the conclusion of the deposition, or (ii) by written notice, sent by counsel to all parties within five (5) business days after the receipt of the preliminary transcript of the deposition. All deposition testimony shall be considered Highly Confidential Information until five (5) business days from the receipt by counsel of the preliminary transcript, so as to allow for possible designation under subparagraph (a)(ii).

(b) Any portion of the transcripts of oral testimony and oral argument during the Proceeding shall be considered Highly Confidential Information, unless otherwise expressly agreed to by all of the parties to this Agreement whose Highly Confidential Information is contained in any such transcript. The reporter of the Proceeding shall not provide transcripts to anyone other than Outside Counsel of Record for the Parties in this Proceeding and the Arbitrator.

7. Storage of Highly Confidential Information. The Arbitrator and any other person to whom Highly Confidential Information is provided shall place the Highly Confidential Information in a non-public file. Highly Confidential Information shall be segregated in the files of the Arbitrator, and shall be withheld from inspection by any person not bound by the terms of this Agreement, unless such Highly Confidential Information is released to the Commission or a court of competent jurisdiction pursuant to paragraphs 11 and 18 hereto.

8. Access to Confidential Information and Highly Confidential Information.

(a) Other than in accordance with Paragraphs 5, 11, and 18 of this Agreement, Confidential Information may be disclosed, summarized, described, characterized or otherwise communicated or made available in whole or in part only to Authorized Representatives. Before an Authorized Representative may obtain any access to Highly Confidential Information, such person must execute a Declaration.

(b) Notwithstanding anything herein to the contrary, Protected Third Party Agreements or summaries, descriptions, or characterizations of the substance thereof shall not be disclosed to any in-house personnel of a Party, including, but not limited to, any in-house counsel.

(c) Except as otherwise provided in this paragraph, Confidential Information shall not be disclosed to any other person. All persons who obtain Confidential Information in this Proceeding shall ensure that access to that Confidential Information is strictly limited as prescribed in this Agreement and is used only as provided in this Agreement. For the avoidance of doubt, all persons who obtain any Highly Confidential Information in this Proceeding shall comply with the procedures prescribed in paragraphs 4-13 of this Agreement concerning the ongoing designation and use of Highly Confidential Information as such, including, without limitation, any testimony, transcripts, pleadings, or documents containing or derived from Highly Confidential Information.

(d) Highly Confidential Information shall only be disclosed to an Outside Expert according to the terms of this subparagraph. If Highly Confidential Information is disclosed to an Outside Expert, for the period extending from the date of the disclosure until [date one year from today], such Outside Expert will not work for any [regional sports network, broadcaster, national programmer, etc.], in connection with securing distribution on any of the Parties' systems; nor, for such period, shall such Outside Expert work for any party (i) in connection with any agreement for the distribution by a multichannel video